United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

714

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 23426 and 23427

RENARD G. DAVIS, *et al.*,
Plaintiffs-Appellants,

—against—

EDWIN E. WILLIS, *et al.*,
Defendants-Appellees.

and

QUENTIN YOUNG,
Plaintiff-Appellant,

—against—

EDWIN E. WILLIS, *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF AND APPENDIX FOR PLAINTIFFS-APPELLANTS

ARTHUR KINOY
MORTON STAVIS
NANCY STEARNS
588 Ninth Avenue
New York, N. Y. 10036

HENRY M. DI SUVERO
25 E. 26th Street
New York, N. Y. 10010

(Counsel continued on inside cover)

Jeremiah S. Gutman
363 Seventh Avenue
New York, N. Y. 10001

Sanford Katz
30 East 42nd Street
New York, N. Y. 10017

Lubell & Lubell
103 Park Avenue
New York, N. Y. 10017

Gerald Lefcourt
37 Union Square West
New York, N. Y.

Melvin Wulf
156 Fifth Avenue
New York, N. Y. 10010

William M. Kunstler
Philip J. Hirschkop
1025 33rd Street, N. W.
Washington, D. C.
337-4466

Attorneys for Plaintiffs-Appellants

On the Brief:

Jeremiah S. Gutman
Nancy Stearns

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Questions Presented

I. Do appellants, as witnesses who have responded to subpoenas of a Congressional Committee which continues to exist, and maintain and use files containing political and

personal data concerning associations, expressions of belief and other protected activities of appellants (and others in their class):

a) present a justiciable issue in attacking the constitutionality of the mandate of that Committee;

b) confer jurisdiction upon the Court by complaining of the injuries thereby done them;

c) have standing to maintain such an action?

II. Do Rule XI of the Legislative Reorganization Act of 1946 and H. Res. 89 of the 91st Congress, 1st Session, violate the Constitution of the United States in that, as written and implemented:

a) they are vague and overbroad in an area protected by the First Amendment thereto;

b) they purport to authorize investigations into areas protected against such intrusions by the 1st, 5th, 9th, 13th, and 15th Amendments;

c) they authorize such unlawful actions by means in violation of the 4th, 5th, 6th, and 8th Amendments and Article I, Section 9, clause 3;

d) they violate Article III by invading the area reserved to the judicial branch of our government?

III. Was the District Court in error in refusing to add as parties defendant certain staff employees of the House Committee on Un-American Activities/Committee on Internal Security?

The consolidated cases were previously before this Court under the same titles as Appeals Numbers 22608 and 22609 but were remanded to the District Court.

References and Rulings

This is an appeal from a final order of United States District Judge George L. Hart, Jr., dismissing the consolidated complaints herein.

Appellants instituted these federal actions on October 1, 1968, seeking declaratory and injunctive relief. Following oral argument the consolidated actions were dismissed from the bench on Oct. 17, 1968. Notices of appeal were filed but due to intervening events appellants sought and were granted remand to the District Court in order to present new facts to the court.

A supplementary complaint was filed on or about May 6, 1969. Following re-argument, the consolidated actions were again dismissed by District Judge Hart from the bench on June 25, 1969. Jurisdiction over the appeal from that dismissal is conferred by 28 U.S.C. 1291.

Statement of the Case

Appellants Dr. Quentin Young, Renard G. Davis, David Dellinger, Robert Greenblatt, Thomas Hayden, Abbie Hoffman, and Jerry Rubin, were subpoenaed to appear before the House Committee on Un-American Activities in hearings begun in October 1968, ostensibly to investigate violence which occurred in Chicago, Illinois in August, 1968, during the Democratic National Convention. Each of the plaintiffs in his own way is committed to a philosophical and activist program involving profound changes in many current institutions in our society, including a common belief in the illegality and pragmatic lack of wisdom of the present United States policy in Vietnam, Dr. Young as a

physician, Mr. Dellinger as a life-long and dedicated pacifist and the others as political organizers, propagandists and activists. Appellants did and still do believe that the subpoenas had been issued in an attempt to harass and punish them for their political activities, particularly those activities related to peaceful demonstrations opposing the foreign and domestic policies of the United States Government held in Chicago in August 1968 and to deter them, and others who might be more fearful of the power of the Committee, from continuing such activities. They initiated this action to test the constitutionality of the subpoenas and the legislative mandate pursuant to which they were issued.[1]

Appellants sought the convening of a three-judge court pursuant to 28 U.S.C. 2282 and 2284 and the issuance of a temporary restraining order to halt the enforcement of the subpoenas pending the determination of the constitutionality of Rule XI of the Legislative Reorganization Act of 1946, the mandate of the Committee. Oral arguments were presented on October 17, 1968, before United States District Judge George L. Hart. The consolidated cases were dismissed from the bench. Appellants filed timely notices of appeal. On February 4, 1969, an order was entered consolidating the appeals and extending appellants' time. Appellants then sought remand to the District Court to enable that court to reconsider its earlier decision in light of certain new facts:

1) The House of Representatives had passed House Resolution 89 amending the Rules of the House of Repre-

[1] Two actions, one by appellant Young and one by the other six appellants, were consolidated.

sentatives to change the name of the House Committee on Un-American Activities to the House Committee on Internal Security and to alter the language of the legislative mandate of the Committee. (See Appendix G for full text of H. Res. 89);

2) A subpoena *duces tecum* had been issued by respondents requiring the bank with which Appellant, Dr. Young, did business to produce all of his bank records (the subpoena was later withdrawn by respondents on the admission that it was invalid); and

3) The United States Supreme Court had resettled its order in *Stamler* v. *Willis,* 393 U.S. 407 (1969), a case almost identical to the instant case, permitting the plaintiffs therein to perfect their appeal to the Court of Appeals for the Seventh Circuit from a dismissal by the three-judge district court. (The recent opinion of the Seventh Circuit in *Stamler* is reproduced in full at Appendix H and will be discussed more fully below.)

Remand was granted by this Court on May 1, 1969 and on or about May 6, 1969, Appellants filed a supplemental complaint, which is annexed hereto as Appendix C, and moved to add as parties defendant Frances J. McNamara, then staff director, and Donald G. Sanders, staff counsel. Oral argument was again presented before Judge George L. Hart, shortly after the decision in *Powell* v. *McCormack,* 89 S.Ct. 1944 (1969), which Judge Hart felt not controlling, and again the consolidated action was dismissed from the bench on the grounds that:

> "... the plaintiffs have no standing to sue in this case, in this court's opinion, at this time. They have an adequate remedy at law as, if and when any action is

taken against them by the House Un-American Activities to bring them before them."

Judge Hart further ruled:

1. That Rule XI of the Legislative Reorganization Act 1946 was no longer in effect;

2. That nonetheless, it was constitutional;

3. That House Rule 89, the current mandate, is constitutional;

4. That the United States Attorney General would be dismissed as defendant; and

5. That appellants' motion to add parties defendants would be denied.

[See Appendix D and E for the Ruling of Judge Hart from the Bench and the order dismissing the consolidated actions.]

Statutes Involved

a) Legislative Reorganization Act of 1946, Rule XI, 60 Stat. 812. For text, see Appendix F.

b) 91st Congress, 1st Session, H. Res. 89. For text, see Appendix G.

c) 28 USC 2201

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether

or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

d) 28 USC 2202

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

Statement of Points

I. Under the recent rulings of the United States Court of Appeals for the Seventh Circuit in *Stamler* v. *Willis* and the United States Supreme Court in *Powell* v. *McCormack,* the ruling of the District Court dismissing this action must be reversed.

II. Appellants have standing to challenge the constitutionality of the former Rule XI of the Legislative Reorganization Act of 1946 and the current Rule XI embodied in House Resolution 89.

III. The constitutionality of both the current Rule XI and its predecessor present an obvious and substantial constitutional question which must be decided by the courts.

IV. Rule XI of the Legislative Reorganization Act of 1946 (which continues to have force and effect under H. Res. 89) is unconstitutionally broad and vague in violation of the First Amendment.

V. Rule XI of the Legislative Reorganization Act as applied constitutes a Bill of Attainder.

VI. The District Court was in error in denying appellants' motion to add parties defendants.

Summary of Argument

This action arises out of the operation of the House Committee on Un-American Activities, which has been renamed the House Committee on Internal Security (hereinafter the Committee), and which for its more than twenty year history as a standing committee under the Legislative Reorganization Act of 1946 has consistently and directly abridged the First Amendment guarantees of freedom of speech, and association by the use of "exposure, obloquy and public scorn." *Barenblatt* v. *U. S.*, 360 U.S. 109, 141 (1959). Under the recent rulings of the United States Supreme Court in *Powell* v. *McCormack*, 89 S.Ct. 1944 (1969) and the United States Court of Appeals for the Seventh Circuit in *Stamler* v. *Willis*, unreported opinion, reproduced in full at Appendix H, it is clear that the questions of the constitutionality of the mandate and process of that committee raised by appellants herein are justiciable and the Court has jurisdiction to rule thereon.

Appellants, as persons affected by past process and current political black-list files maintained by the Committee are subject to irreparable harm from the Committee and thus have standing to raise constitutional questions concerning the authorization and activities of the respondents.

Although Rule XI of the Legislative Reorganization Act of 1946 was amended by H. Res. 89 on February 18, 1969,

that resolution made specific provision for the maintenance and use of files accumulated under the authority of the original Rule XI by the respondent Committee. Thus both the constitutionality of the original Rule XI under which subpoenas were issued against and information gathered concerning appellants, and the constitutionality of H. Res. 89 under which that information will be used, must be scrutinized by the Court.

The legislative authorization of the Committee embodied in Rule XI of the Legislative Reorganization Act (and as recently revised) is vague and overbroad in violation of the First Amendment of the Constitution and on its face and as applied constitutes a Bill of Attainder and violates the rights of privacy, counsel, freedom from unlawful searches and seizures, due process, free speech, association and press and freedom from cruel and unusual punishment and constitutes unconstitutional encroachment on the powers of the judiciary.

Under the principles of *Powell* v. *McCormack, supra,* and the recent Seventh Circuit decision of *Stamler* v. *Willis, supra,* appellants should be permitted to join as parties defendant in this action both the Staff Director and Chief Staff Counsel of the Committee in order to facilitate the consideration of the critical constitutional questions raised herein, for as the Supreme Court reminded us in its opinion in *Powell,* it is both the "province and duty" of the federal courts to consider whether the proceedings of the legislature "are in conformity with the Constitution and laws."

I.

Under the recent rulings of the United States Court of Appeals for the Seventh Circuit in *Stamler* v. *Willis* and the United States Supreme Court in *Powell* v. *McCormack*, the ruling of the District Court dismissing this action must be reversed.

Only two months ago the United States Court of Appeals for the Seventh Circuit ruled in *Stamler* v. *Willis, supra* a case exactly parallel to this and attacking on the same grounds the constitutionality of the House Un-American Activities Committee, that the plaintiffs are entitled to a civil trial on the constitutional question, stating that:

> The judiciary has always borne the basic responsibility for protecting individuals against unconstitutional invasions of their rights by all branches of the government [App. H p. 77a].

and further that:

> The Congress has no more right, whether through legislation or investigations conducted under an overbroad enabling Act, to abridge the First Amendment freedoms of the people, than do other branches of government, "For free expression—of transcendent value to all society, and not merely to those exercising their rights—might be the loser." Citing *Dombrowski* v. *Pfister,* 380 U.S. 479 at 486 [App. H pp. 77a-78a].

In *Stamler,* plaintiffs had been subpoenaed to testify before the House Committee on Un-American Activities in Chicago. They instituted a civil action challenging the

constitutionality of the Committee's legislative authorization. During the four years of procedurally intricate litigation the questions of justiciability, separation of powers, standing, and want of equity were raised by the government on several occasions before the District Court and Court of Appeals. The Court of Appeals ruled squarely that those issues had already been decided adversely to the government in the course of the litigation and that in the trial ". . . the parties should develop the necessary factual predicate and direct their legal arguments to the substantive questions of the constitutionality of Rule XI raised in the original complaint. *Stamler* v. *Willis, supra,* footnote 8 [App. H p. 79a].

The opinion of the Supreme Court in *Powell* v. *McCormack, supra,* at the close of last term further makes it clear that the District Court below was in error in dismissing the complaints herein. In a most systematic fashion the Supreme Court considered the questions of justiciability and its implications for a suit against the House of Representatives. Just as the court concluded that the principle of justiciability did not constitute an impediment to the determination of the constitutionality of an action by the entire House of Representatives, neither can it hinder the consideration of the constitutionality of actions or authorizations of a single Committee of that Body, to determine if a case is "justiciable." As the Supreme Court stated:

> Two determinations must be made in this regard. First, we must decide whether the claim presented and the relief sought are of the type which admit of judicial resolution. Second, we must determine whether

> the stricture of the federal Government renders the issue presented a "political question"—that is a question which is not justiciable in federal court because of the separation of powers provided by the Constitution.
>
> In deciding generally whether a claim is justiciable, a court must determine whether "the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded". 89 S. Ct. 1944, 1961.

The Court concluded that there was a judicially identifiable breach of a right for which relief could be judicially molded. It further directed itself to the problem raised by District Judge Hart below in his contention that the District Court:

> . . . can consider by no means whatever that it could fashion a decree to carry out any declaratory judgment that the court might give, and there is no issue here really at this time on which the court could declare any declaratory judgment. But if it did, there would be no way this Court could figure that it could be enforced [App. E p. 64a].

The Supreme Court expressly stated that:

> We need express no opinion about the appropriateness of coercive relief in this case, for petitioners sought a declaratory judgment, a form of relief the District Court could have issued. The Declaratory Judgment Act, 28 U.S.C. §2201 (1964 ed.) provides that a district court may "declare the rights . . . of any interested party . . . whether or not further relief is or

> could be sought." The availability of declaratory relief depends on whether there is a live dispute between the parties. *Golden* v. *Zwickler,* 394 U.S. 103 (1969), and a request for declaratory relief may be considered independently of whether other forms of relief are appropriate. See *United Public Workers* v. *Mitchell,* 330 U.S. 75, 93 (1947); 6A J. Moore, Federal Practice Para. 57.08 (3) (2d ed., 1966); cf. *United States* v. *California,* 332 U.S. 19, 25-26 (1947). *Powell* v. *McCormack, supra,* 89 S. Ct. at 1962.[2]

Certainly here there is a live dispute between the parties in which declaratory relief is available. Plaintiffs have asserted in their supplementary complaint that dossiers concerning them are in the files of the defendant Committee and that those files have been expressly retained by and for the use of the Committee under its new name and mandate. Plaintiffs have also contended that the Committee has used those files over its 30 year history as a massive, government operated, political blacklist in direct violation of the Constitution and that such use of those files has irreparably injured countless thousands of persons. Plaintiffs are surely entitled to prove that they, like the thousands of others whose dossiers remain in the Committee's files, are subject to irreparable injury because of unconstitutional actions of a Committee operating pursuant to unconstitutional authorizations.

Having concluded in *Powell* that the general requirements of a justiciable issue had been met, the Supreme

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[2] The position taken by the Court below that a declaratory judgment cannot issue because of the difficulty of issuing a coercive decree is in complete conflict with and would effectively nullify the Declaratory Judgment Act.

Court then went on to consider the specific impact of the doctrine which precludes the consideration of political questions "because of the separation of powers within the federal government."

Quoting from its earlier decision in *Baker* v. *Carr,* 369 U.S. 186 (1962), at 217, the Supreme Court pointed out that on the surface of a case involving a political question at least one of the following was present:

> "A textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." 89 S. Ct. at 1962.

None of the above criteria is applicable here. Certainly, if the courts can consider whether the exclusion of a member of Congress was beyond the constitutional power of that body it can determine if the authorization of a committee of that same body is constitutional or if subpoenas issued pursuant to that authorization are constitutional or information accumulated pursuant to those subpoenas has been used under a manner within the bounds of the Constitution.

It is plain, therefore, under the ruling of the Supreme Court in *Powell* and the Seventh Circuit in *Stamler,* that appellants have raised issues which are judicially cognizable and that with regard to the question of justiciability the District Court was in error in dismissing appellants' consolidated actions.

II.

Appellants have standing to challenge the constitutionality of the former Rule XI and the current Rule XI embodied in House Resolution 89.

On February 18, 1969, the House of Representatives passed House Resolution 89, which is set forth in Appendix G, altering the mandate of the House Committee on Un-American Activities and changing its name to the House Committee on Internal Security. In debate, members of the Committee, including its chairman, defendant Ichord, spoke quite candidly of the change of name and mandate. Defendant Ashbrook quoted with approval Chairman Ichord's earlier statement that the "new" mandate "does not change the power or the authority of the Committee." Cong. Rec. H. 962, February 18, 1969.

House Resolution 89 specifically provides that:

> As of the date of adoption of this resolution, all property (including records) of the Committee on Un-American Activities is hereby transferred to the Committee on Internal Security and shall be available for use by the latter Committee to the same extent as if such property (including records) was originally that

of the Committee on Internal Security. H. Res. 89, sec. (3).

Appellants have alleged that political dossiers concerning each of them are contained in the records and files of the Committee and that the information was unlawfully gathered by the Committee and retained by it by means of compulsory process issued pursuant to the former Rule XI. By the Committee's own admission over its long history it has used the thousands upon thousands of such political dossiers as a master government sponsored political blacklist, boasting in its annual reports and in the pages of the Congressional Record of the numbers of government agencies and Congressmen who come to check its files on individuals each week of the year.[3]

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[3] See for example the 1955 Annual Report (H.R. Rep. No. 1648, 84th Cong., 2d sess. (1956) pp. 33-35):

"The committee maintains a large collection of information on the subject of subversive activities covering, in general, the years 1938 to date, although there is a wealth of even older material on file.

"This valuable collection is maintained in order to furnish reference service not only to the committee's own members and staff for use as background material and actual exhibits in investigations and hearings but to every Member of Congress who submits a written request for information in this field.

"This reference service goes far beyond the ordinary type which simply points out the best sources of information to the person making inquiry. Whenever references to the subject under consideration are found in public source material, a written report of that information is furnished setting forth, point by point, what appears and where it appears, together with any pertinent citations by this committee or the Attorney General on every organization involved.

"Although the usefulness of this service cannot be judged entirely by statistics, the following figures do indicate that there is great interest in and need for the information. During 1955, more than 1,300 requests were received from the Members of Congress, necessitating a check of source material in

More recent statements of former Chairman Edwin Willis indicating that 27 government departments or agencies send personnel to search Committee files and that Committee employees made searches on behalf of fourteen other agencies and departments as well as various Congressional Committees have been inserted in the Congressional Record. 113 Cong. Rec. H. 3533 (daily ed.) April 5, 1967.

The impact of the vast number of checks or searches of Committee files made by or for other government agencies becomes even greater in the face of the statement of the United States Civil Service Commission that during fiscal

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the committee's public records, files, and publications for information on 4,325 individuals and 911 organizations, publications, and more general subjects. In 3,181 instances, information was found in committee records and was compiled into detailed reports sometimes as long as 12 to 15 pages on a single subject.

"The constant use of the collection by the committee's own employees can be only partially described by statistics. However, the reference section staff has supplied to other staff members written reports on 1,272 individuals and 58 organizations over the past 12 months, has given verbal answers on 2,072 persons and 1,011 organizations, and has searched out and supplied copies of 800 or more exhibits for use in investigations and hearings.

"Still another service of the reference section is furnished to designated representatives from various agencies of the executive branch of the Government, who are permitted, 4 days each week, to use the resources available here in making scurity checks. It has been necessary, because of comparatively limited space and facilities, to restrict the number of agents accredited for admission as well as the amount and type of reference service provided for them. However, the reference section staff has continued to point out sources of information and to answer their questions concerning committee records on an average of 12 or more times daily. A total of 3,500 visits by properly accredited Government agents has been recorded for 1955, which in 37 percent of the cases extended over the entire working day."

year 1967 they checked Committee files 288,000 times regarding persons employed (or to be employed) in competitive civil service positions and that such checks of appellees' files are part of their standard procedure in determining a person's "fitness" or "suitability". Cong. Rec. H. 1889, March 13, 1968 (Daily Ed.).

What is more, the use of the Committee's files does not stop at the walls of the Federal Government. As merely one example, in 1959 the Committee subpoenaed over 100 California teachers, later cancelling the subpoenas. It then decided to transmit the names of those teachers to their respective boards of education. See, speech of Francis F. Walter, 106 Cong. Rec. 17042 (1960). Congressman Walter further implied that the purpose of transmitting the information was to provide the school Boards a basis for firing the teachers. 106 Cong. Rec. 17045 (1960). The firing of at least one teacher can be directly attributed to that release of Committee files. See *Huntington Beach Union High School District* v. *Collins,* 202 Cal. App. 2d 677, 21 Cal. Rptr. 56, *cert. denied* 371 U.S. 904 (1962).

In the case of *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 139 (1951), Mr. Justice Burton, speaking for the court noted the damage wrought on organizations designated as "subversive" by the Attorney General and the Loyalty Review Board, stating:

> "Their effect is to cripple the functioning and damage the reputation of those organizations in their respective communities in the nation."

Of course, individuals, like the organizations they are associated with, can be and have been irreparably injured by such designations. Furthermore, as Justice Black stated

in his concurring opinion in the *Joint Anti-Fascist Refugee Committee* case, ". . . the Due Process clause of the Fifth Amendment would bar such condemnation without notice and a fair hearing." 341 U.S. at 143.

Appellants are well aware of the damage caused by the Committee through its use of its files, damage which far surpasses even that created by its power of contempt. Therefore, as long as their names and information concerning them remain in those files they realize that they, like countless thousands of others, are threatened with the very real and immediate damage by the Committee if they continue to espouse political positions which are disapproved by the defendants and their successors. Thus, the fact that the defendants no longer have the power to cite appellants for contempt in no way lessens the very real and immediate threat of injury to appellants and the class they represent or in any way lessens their standing to challenge both the mandate under which those records and files were amassed and that under which they are currently being used.

III.

The constitutionality of both the current Rule XI and its predecessor present an obvious and substantial constitutional question which must be decided by the courts.

Twice the United States Court of Appeals for the Seventh Circuit has ruled that the constitutionality of Rule XI (the former) presents a substantial constitutional question which must be decided by the District Court. *Stamler* v. *Willis,* 371 F. 2d 413 (7th Cir. 1966) and unreported opinion August 5, 1969 (App. H). The same conclusion was

reached by the Chief Judge of this Court in convening a three-judge court in *Krebs* v. *Ashbrook,* 275 F. Supp. 110 (D.C. D.C. 1967).[4] See also *Gojack* v. *United States,* 384 U.S. 702 (1966); *Watkins* v. *United States,* 354 U.S. 178 (1957). The Chairman of the Committee, defendant Ichord himself pressed for rewording of the mandate in debate stating:

> Admittedly, Mr. Speaker, this mandate is very vague and ambiguous on its face,

and continuing:

> (T)his vagueness has given some credence to the charge that the committee is not interested in subversive activities but has the power to investigate unorthodox political views and opinion. 91st Cong., 1st Sess., Cong. Rec. H. 958, February 18, 1969.

The new wording of the mandate of the Committee has not cured its object and Rule XI continues to present substantial constitutional questions.

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[4] On remand to the United States District Court that case was dismissed without opinion. However, the order dismissing the case did not even reach the constitutional question but rather relied on principles of separation of powers, congressional immunity, etc. The order of dismissal was entered on May 5, 1969 before the rulings in *Powell* and *Stamler,* discussed above which ruled to the contrary on those same legal principles. No appeal was taken by plaintiff as the identical constitutional questions were being litigated by appellants herein.

IV.

Rule XI of the Legislative Reorganization Act of 1946 is unconstitutionally broad and vague in violation of the First Amendment.

The Legislative Mandate establishing the House Committee on Un-American Activities is Rule XI of the Legislative Reorganization Act of 1946, 60 Stat. 812, 828 which states as follows:

> The Committee on Un-American Activities, as a whole or subcommittee, is authorized to make from time to time investigations of (i) the extent, character and objects of *un-American* propaganda activities in the United States, (ii) the diffusion within the United States of *subversive and un-American propaganda* that is instigated from foreign origin and *attacks the principle of the form of government* as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Although the appellees invariably cite *Barenblatt* v. *United States,* 360 U.S. 109 (1959) as establishing the constitutionality of the Committee mandate, thereby foreclosing further judicial inquiry, they omit properly to place before the Court the subsequent history of the *Barenblatt* decision. That that history casts enormous doubt upon the holding in *Barenblatt* and its present vitality is undeniably clear.

In *Gojack* v. *United States,* 384 U.S. 702 (1966), the Supreme Court granted certiorari on the specific issue, among

others, allegedly foreclosed in *Barenblatt.* Judge Corcoran so recognized in *Krebs* v. *Ashbrook,* in the following language:

> Only recently, however, in *Gojack* v. *U. S.,* the Supreme Court saw fit to accept the case for review under a writ of certiorari on certain questions among which [were] several expressly directed to the constitutionality of the Reorganization Act of 1946 as applied to Rule XI of the Congress. As the Court noted in the course of the oral argument today, the Supreme Court avoided the constitutional issue when the case was finally argued and so has cast no light upon the question. . . . (Statement from the Bench accompanying order granting temporary restraining order and certifying convening of three judge court. Unreported, August 15, 1966.)

The grant of certiorari in *Gojack* extended to a consideration of the following issue:

> Whether the statute creating the Committee and defining its power is unconstitutional on its face or as applied in this case in that
>
> a) it exceeds the legislative power of Congress;
>
> b) it is too vague and indefinite;
>
> c) it abridges rights secured by the First Amendment;
>
> d) it violates the constitutional principle of separation of powers.
>
> See Petition for Certiorari in *Gojack,* Docket No. 549, October Term, 1965.

A. *The Area of "Propaganda" Activities Falls Within the Protection of the First Amendment.*

The main thrust of the Committee mandate is to authorize investigation into various types of propaganda. What is propaganda, after all, but ideas and free speech, protected by the First Amendment?[5] Therefore, from the very start the mandate is authorizing investigations into clearly protected activity.

The word propaganda is then modified in subsection (i) of the Committee's Charter by the word un-American. These words do not cure the defect of the word propaganda by limiting the scope of the Committee; rather they add to the infirmity by directing the Committee to inquire into areas that both the Supreme Court and the Committee itself have found to be overly broad and vague.

The Supreme Court asked in *Watkins, supra,* "Who can define the meaning of un-American?" 354 U.S. at p. 202. Even members of the Committee concede the vagueness of these words. Rep. Ichord, chairman of the sub-committee

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[5] The word Propaganda has been defined as follows:

Columbia Encyclopedia, 3rd Edition: "Method of creating or maintaining a favorable (or, conversely, a hostile) attitude toward some person, organization, nation or ideal by a positive or negative influencing of opinion."

The Random House Dictionary of the English Language, 1967: "Information, rumors, etc., deliberately spread widely to help or harm a person, group, movement, institution, nation, etc."

The Shorter Oxford English Dictionary, 3rd Edition: "Any association, systematic scheme, or concerted movement for the propagation of a particular doctrine or practice."

18 Encyclopaedia Britannica 580b, 1964: "Propaganda is the making of deliberately one sided statements to a mass audience. It is an act of advocacy in mass communication."

Dissent of Mr. Justice Black in *Barenblatt,* 360 U.S. at 138; Propaganda " . . . seems to mean anything that people say, write, think or associate together about. . . ."

conducting the hearings to which plaintiffs have been subpoenaed and which have been temporarily adjourned has stated:

> "Admittedly (Rule XI) is extremely vague and ambiguous."
>
> * * * * *
>
> Why become bogged down in argument and legal battle over whether activities are American or un-American when more precise language can be used." Cong. Rec., 90th Cong., 2d Sess., pp. H7092-3 (daily ed.) July 19, 1968.

See also Judge Edgerton dissenting in *Barsky* v. *United States,* 167 F. 2d 241, 261 (D.C. Cir., 1948) and *Snyder* v. *Board of Trustees,* 286 F. Supp. 927 (N.D. Ill., E.D. 1968), holding unconstitutional for vagueness the Clabaugh Act (that Act sought to regulate "subversive, seditious and un-American organizations").

The Supreme Court has made it clear in the past few years that the word "subversive" is void for vagueness. See *Baggett* v. *Bullitt,* 377 U.S. 360 (1965) in which the Supreme Court struck down a loyalty oath relating to "subversive persons" and *Keyishian* v. *Board of Regents,* 385 U.S. 589 (1967) in which a statute barring state employment for persons involved in "subversive activities" was likewise declared void for vagueness. The Court held unconstitutional the Maryland Subversive Activities Act in *Whitehill* v. *Elkins,* 88 S. Ct. 184 (1967). See also *Liveright* v. *Joint Committee of General Assembly,* 279 F. Supp. 205 (M.D. Tenn., 1968), enjoining as violative of the First Amendment a state legislative investigating committee authorized to investigate the "subversive" activities of a named organization.

Under the current understanding of vagueness under the First Amendment, the fatal vagueness of Rule XI cannot be cured merely by apprising a particular witness of the pertinency of a particular hearing or question posed. Although the Supreme Court in *Barenblatt* recognized the vagueness of the Committee's mandate, at that time they were concerned primarily with the concept of vagueness under the Fifth Amendment Due Process clause; that is, they were concerned lest a person be convicted of criminal contempt for failing to answer a question of the Committee when he understood neither the pertinency of the hearing nor that of the question asked. Contempt convictions were therefore sustained where the courts found that the defendant (witness) had been sufficiently apprised of pertinency by means other than the Committee's mandate. See *Barenblatt* v. *U. S., supra, Wilkinson* v. *U. S.,* 365 U.S. 431 (1961); *Braden* v. *United States,* 365 U.S. 431 (1961). If the courts found that pertinency had never been established (and therefore there was a violation of Due Process guarantees) convictions were reversed. See *Watkins* v. *United States, supra; Gojack* v. *United States,* 384 U.S. 702 (1966); *King* v. *United States,* 252 F. 2d 791 (8th Cir. 1958).

Since the *Barenblatt* decision in 1959, the Supreme Court has firmly developed a new concept of vagueness, that of First Amendment Vagueness. Writing for the Court in *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 432-3 (1963) Justice Brennan stated:

> It makes no difference that the instant case was not a criminal prosecution and not based on a refusal to comply with a licensing requirement. The objectionable quality of vagueness and overbreadth does not

> depend on absence of fair notice to a criminally accused or upon unchallenged delegation of legislative powers, but upon the danger of tolerating in the area of First Amendment freedoms the existence of a penal statute susceptible of sweeping and improper application.
>
> * * * * *
>
> Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.

See, for example, *Keyishian* v. *Board of Regents, supra, Dombrowski* v. *Pfister,* 380 U.S. 489 (1965); *Baggett* v. *Bullitt, supra, Whitehill* v. *Elkins,* 88 S. Ct. 184 (1967), all holding statutes void for vagueness under the First Amendment of the Constitution.

The concept of First Amendment vagueness is not concerned solely with actual criminal prosecution under a vague or overbroad statute, but with the threat of prosecution whether or not successful and the fear that such threat engenders for,

> "(t)he threat of sanctions may deter . . . almost as potently as the actual application of sanction. . . ." *Dombrowski* v. *Pfister, supra,* at 486.

The Court has come to understand that when individuals are put in fear of their exercise of rights guaranteed by the First Amendment:

> ". . . free expression—of transcendent value to all society, and not merely to those exercising their rights—might be the loser." *Dombrowski* v. *Pfister, supra,* at 486.

See also *Liveright* v. *Joint Committee of General Assembly, supra,* at 218.

The fact that a statute deals with the "Communist problem" is no longer sufficient to sustain it if it is otherwise constitutionally deficient. The Supreme Court in *Barenblatt* further attempted to justify the fact that it was upholding a contempt conviction under a concededly overbroad statute by stating that it has upheld:

> "... legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character." 360 U.S. at 128.

The Court then cited numerous cases in support of that proposition. Since that time nearly all of those cases have been substantially overruled. *Gerendo* v. *Board of Supervisors,* 341 U.S. 56 (1951) substantially overruled by *Whitehill* v. *Elkins, supra; Adler* v. *Board of Education,* 342 U.S. 485 (1952) by *Keyishian* v. *Board of Regents, supra; American Communications Association* v. *Douds,* 339 U.S. 382 (1950) by *United States* v. *Brown,* 381 U.S. 437 (1965); *Beilan* v. *Board of Public Education,* 357 U.S. 399 (1958) and *Lerner* v. *Casey,* 357 U.S. 468 (1958) by *Schneider* v. *Smith,* 88 S. Ct. 682 (1968) and *United States* v. *Robel,* 88 S. Ct. 419 (1967). This principle of relaxing First Amendment protections to those who are the objects of anti-Communist legislation, therefore, would appear no longer to be sound, thereby depriving Rule XI of its major constitutional crutch.

V.

Rule XI of the Legislative Reorganization Act as applied constitutes a bill of attainder.

Under Article I, Section 9, Clause 3 of the United States Constitution:

> "No Bill of Attainder or *ex post facto* law shall be passed (by the Congress)."

A bill of attainder has been defined as " . . . a legislative act which inflicts punishment without a judicial trial." *United States* v. *Lovett,*[6] 328 U.S. 303, 315 (1946); *Cummings* v. *Missouri,* 4 Wall. 277, 323.

In the most recent leading case dealing with bills of attainder the Supreme Court stated that:

> "The best available evidence indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature."
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> *United States* v. *Brown,* 381 U.S. 437, 442 (1965).

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[6] Note that the *Lovett* case, a leading case concerning bills of attainder arose out of the urging of Martin Dies, chairman of the Special Committee which was the precursor of the House Committee on Un-American Activities, to Congress to refuse to approve the salaries of persons he had named as " 'unfit to hold a government position' because of their beliefs and associations." 328 U.S. at 309.

Three members of the Supreme Court expressed the opinion in the *Barenblatt* case that Rule XI *is* a bill of attainder, stating in a dissenting opinion,

> ". . . the chief aim, purpose and practice of the House Un-American Activities Committee, as disclosed by its many reports, is to try witnesses and punish them because they are or have been Communists or because they refuse to admit or deny Communist affiliations. The punishment imposed is generally punishment by humiliation and public shame. There is nothing strange or novel about this kind of punishment. It is in fact one of the oldest forms of governmental punishment known to mankind; branding; the pillory, ostracism and subjection to public hatred being but a few examples of it. . . ." 360 U.S. at 153-4.

The Committee acts as an investigative agency when it gathers not information to facilitate legislation, but facts concerning past and present political beliefs and affiliations of individuals with a view to bringing charges. It acts as a Grand Jury issuing a presentment or indictment when it issues information leveling charges (primarily charges of Communism) against named individuals. It adopts the role of a trial judge instructing a jury when it invites "punishment" of persons whom it has exposed as Communists.[7]

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[7] There have been many examples of the Committee "inviting" punishment of named individuals, but the most flagrant example occurred when the Committee turned over its files on 110 California teachers to their respective boards of education ". . . to let the appraisals of evidence be made by local authorities rather than the committee." "6 Coast Teachers Forced to Resign," *New York Times,* March 19, 1960, p. 18.

It would be difficult to say how many hundreds of persons have been grievously injured by the Committee's actions in violation of the Bill of Attainder Clause of the Constitution, but it can be said that tremendous numbers of persons have suffered not only social ostracism and shame, but substantial financial losses from loss of job or blacklisting as well as illness or even death. See, as only a very few examples, *Carey* v. *Westinghouse Electric Corp.*, 6 N.Y. 2d 934, 190 N.Y.S. 2d 1003 (1958); *Fino* v. *Maryland Employment Security Board,* 218 Md. 504, 147 A. 2d 738 (Ct. App. 1959); *Ostrofsky* v. *United Steelworkers of America,* 273 F. 2d 614 (4th Cir., 1960), cert. denied 363 U.S. 849 (1960); *Beilan* v. *Board of Education, supra; Huntington Beach High School* v. *Collins,* 202 Cal. App. 2d 677, 21 Cal. Rptr. 561 (1962), cert. denied 371 U.S. 904 (1962). Other examples are collected in Appendix 4 to Jurisdictional Statement, pp. 59-76, *Stamler* v. *Willis,* on appeal to the United States Supreme Court, a copy of which will be supplied to this court.

As discussed more fully above, the comprehensive files, maintained by the Committee constitute a direct and sweeping Bill of Attainder. As such, those files and their use is proscribed by the Constitution for as the Supreme Court stated in *United States* v. *Lovett, supra* at 317,

> "Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty or property of particular named persons, because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by a duly constituted court."

Only two months ago the Superior Court of New Jersey in *Anderson* v. *Sills*, #C-215-68 Superior Court of New Jersey, Chancery Division—Hudson County, July 30, 1969, unreported opinion, recognized the dangers of police files gathered pursuant to an unconstitutional authorization such as those kept by respondents and ordered that all such files be destroyed. If such files are in violation of the Constitution when in the hands of the executive, they are no less unconstitutional when in the possession of the legislature or a committee thereof.

The appellees have argued and urged, both on the floor of Congress and elsewhere, that new House Internal Security Committee (HISC) is nothing more than old House Un-American Activities Committee (HUAC) shorn of its wolf's coat of Rule XI and draped now in the sheep's disguise of H. Res. 89.[8] All we have said and charged above concerning Rule XI applies with equal force to H. Res. 89, which does not cure but in fact, law and practice perpetuates the fatal vagueness of Rule XI. As Chairman Celler has pointed out, H. Res. 89 ". . . is a vague and imprecisely drawn amendment to the rules of the House" which ". . . describe(s) the jurisdiction of the Committee in broad vague language whose ultimate consequences cannot be predicted." Chairman Celler pointed specifically to the language authorizing investigations with respect to activities involving "violence, treachery, espionage, sabotage, insurrection or other unlawful means." He expressed grave concern that this language substantially compounds the vagueness of the jurisdiction of the Committee which was formerly "limited," at least theoretically, to "Un-American and subversive activities," Cong. Rec. H. 960,

[8] "An ass is an ass although his saddle cloth be satin." House Judiciary Committee Chairman Celler referring to H. Res. 89 at 91 Cong., 1st Sess. Cong. Rec. H. 961, Feb. 18, 1969.

February 18, 1969. Congressman Celler has also raised serious questions about the meaning of the words "incite" acts of "terrorism" and "oppose policy affecting the internal security of the United States." Cong. Rec. H. 966, February 16, 1969.

The successor and continuing Committee has the authority to decide what might affect the internal security of the country. Since the continuing Committee promises to follow in the footsteps of the original Committee, the scope of investigations will predictably encompass areas protected by the First Amendment.

VI.

The District Court was in error in denying appellants' motion to add parties defendant.

The Seventh Circuit in *Stamler* v. *Willis, supra,* citing Federal Rule of Civil Procedure 19(a)(1), ruled that if the *Stamler* plaintiffs so requested, they should be permitted to add as parties defendant, "appropriate agents" of the House Committee. The Court stated further, "since the Congressional defendants have had notice of pendency of this action from its inception, no prejudice will result from permitting joinder of agents of the Committee for the sole purpose of making effective relief possible in this declaratory and injunctive action."[9] See *County Theatre Co.* v. *Paramount Film Dists. Corp.,* 166 F. Supp. 221 (E.D. Pa., 1958); *Denver* v. *Forbes,* 26 F.R.D. 614 (E.D. Pa., 1960).

Rule 19(b) of the Federal Rules of Civil Procedure cited by the Court in *Stamler,* states:

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[9] At the time that appellants moved to add the parties defendant, the existing defendants had not even joined issue.

> When persons who are not indispensable but who ought to be parties if complete relief is to be accorded between those already parties, have not already been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court *shall* order them summoned to appear in the action (emphasis added).

The situation before the District Court at the time of the motion fell squarely within Rule 19(b). The parties are necessary to afford complete relief to plaintiffs. Their joinder will not affect the venue or jurisdiction of the action. The District Court erred by not granting plaintiffs' motion.

The Staff Director and Chief Counsel are "necessary parties" under Rule 19(b):

> Persons who have an interest in the controversy and who, though not indispensable parties, ought to be made parties in order that the court may act on that rule which requires it to decide and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it are "necessary" parties. *Rank* v. *Krug,* D.C. Cal. 1956, 142 F. Supp. 1.

> "Necessary parties" are those who, though it is not always absolutely necessary that they be joined, are so far proper and desirable as parties that the court will *require* them to be joined if it can be done without destroying the court's jurisdiction over the cause. *Federal Gas, Oil & Coal Co.* v. *Cassady,* D.C. Ky. 1943, 56 F. Supp. 824 (emphasis added).

As necessary parties, the court must join them. They have discretion only if joinder would destroy jurisdiction. See *Edwards* v. *Rogers,* 120 F. Supp. 499 where the Court states:

> Under subdivision (b) of this rule [Rule 19] the court has no discretion as to whether to join necessary parties excepting in those instances in which said subdivision confers discretion. *Edwards* v. *Rogers,* 120 F. Supp. 499 at p. 502.

This discretion is conferred only when the Court will be deprived of jurisdiction by joinder of the necessary party or parties:

> If a party is indispensable, the court does not have power to proceed in his absence while if a party is conditionally necessary, he must be joined if possible, but the court has discretion to proceed in his absence if he cannot be joined without depriving the court of jurisdiction. *Curtis* v. *American Book Co.,* D.C.N.Y. 1955, 17 F.R.D. 504.

Even if it may be questioned whether members of Congress should be retained as proper or appropriate parties, it is clear by now that members of the staff of Congress or its Committees are proper defendants who should be retained, or added as necessary to afford appropriate relief. See *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967); *Powell* v. *McCormack, supra; Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

CONCLUSION

Quoting its decision in *Kilbourn* v. *Thompson, supra,* the Supreme Court in *Powell* v. *McCormack,* 89 S. Ct. *supra,* at 1956 reiterated the responsibility of the courts to come to grips with critical constitutional issues even if they deal with a co-ordinate branch of the government, stating:

> "'Especially is it competent and proper for this court to consider whether its (the legislature's) proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void.' 103 U.S. at 199."

The consolidated cases before this Court raise most serious constitutional questions concerning the authorization and functioning of a congressional committee which has gone so far as to attempt to evade judicial scrutiny by changing its name and altering the language of its mandate and purpose while its own members attest to the fact that its operations will continue unchanged and unrestrained by the embarrassing niceties of constitutional restrictions.

The recent decisions in *Stamler* v. *Willis* and *Powell* v. *McCormack* should make it clear that, although concededly

delicate, the constitutional questions raised by appellants must be reached by this Court. Appellants therefore respectfully request that the order of the District Court be reversed and the cause remanded for trial or that this Court, on plenary consideration of the issues raised herein, declare Rule XI of the Legislative Reorganization Act of 1946 and H. Res. 89 to be in violation of the United States Constitution.

Respectfully submitted,

ARTHUR KINOY
MORTON STAVIS
NANCY STEARNS
588 Ninth Avenue
New York, N. Y. 10036

HENRY M. DI SUVERO
25 E. 26th Street
New York, N. Y. 10010

JEREMIAH S. GUTMAN
363 Seventh Avenue
New York, N. Y. 10001

SANFORD KATZ
30 East 42nd Street
New York, N. Y. 10017

LUBELL & LUBELL
103 Park Avenue
New York, N. Y. 10017

GERALD LEFCOURT
37 Union Square West
New York, N. Y.

MELVIN WULF
156 Fifth Avenue
New York, N. Y. 10010

WILLIAM M. KUNSTLER
PHILIP J. HIRSCHKOP
1025 33rd Street, N. W.
Washington, D. C.
337-4466

Attorneys for Plaintiffs-Appellants

On the Brief:

JEREMIAH S. GUTMAN
NANCY STEARNS

APPENDICES

APPENDIX A

Complaint for Injunctive and Declaratory Relief

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2441-68

RENARD G. DAVIS, 25 East 26th Street, New York, N. Y.; DAVID DELLINGER, 5 Beekman Street, New York, N. Y.; ROBERT GREENBLATT, 5 Beekman Street, New York, N. Y.; THOMAS HAYDEN, 25 East 26th Street, New York, N. Y.; ABBIE HOFFMAN, 30 St. Marks Place, New York, N. Y., and JERRY RUBIN, 13 East 3rd Street, New York, N. Y., on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

—v.—

EDWIN E. WILLIS, WILLIAM M. TUCK, RICHARD H. ICHORD, JOHN C. CULVER, JOHN M. ASHBROOK, DEL CLAWSON, RICHARD L. ROUDEBUSH and ALBERT W. WATSON, as Chairman and Members of the Committee on Un-American Activities of the United States House of Representatives, House Office Building, Washington, D. C.; and RAMSEY CLARK, as Attorney General of the United States, Department of Justice, Washington, D. C.; and DAVID G. BRESS, as United States Attorney for the District of Columbia, United States Courthouse, Washington, D. C.,

Defendants.

Plaintiffs for their verified complaint allege as follows:

PARTIES

A. *Plaintiffs*

1. Plaintiff Renard G. Davis is a citizen of New York State and of the United States. He graduated from Oberlin College in 1962 with a B.A. in Political Science. In 1963 he did graduate work at the University of Illinois in industrial relations. In 1964 he did graduate work at the University of Michigan in Political Science. In 1965 he did graduate work at the University of Chicago in Political Science. Mr. Davis is a long time member of Students for a Democratic Society (S. D. S.). In 1964 Mr. Davis was a member of the National Council of S. D. S. From 1964-5 he was the project director of the SDS Economic Research and Action Project. From 1965-7 he was director of the JOIN Community Union in Chicago. In 1967 Mr. Davis was the director of the Center for Radical Research in Chicago, Illinois. In the summer of 1967 Mr. Davis was coordinator for Summer of Support. In 1968 Mr. Davis was project director for the National Mobilization Committee to End the War in Vietnam and is presently National Coordinator for the National Mobilization Committee. He is the project director for National G. I. Week of November 1-3, 1968. Mr. Davis has long been an outspoken critic of racism and discrimination in this country. He made numerous trips to the Deep South in the early 1960's. He worked in Selma, Alabama in Voter Registration and community projects. Mr. Davis has long been a vigorous critic of the United States military intervention in Vietnam. He has spoken out extensively against the war in hundreds of public

meetings and hundreds of appearances through the news media. He was one of the Americans who met with citizens of Vietnam in Bratislava, Czechoslovakia. In October 1967 Mr. Davis spent nineteen days in North Vietnam and he also journeyed to Cambodia and Laos on a fact finding mission, wherein Mr. Davis authenticated the use by the United States military personnel of experimental weapons against the people of Vietnam. On his trip Mr. Davis also authenticated the systematic, rather than accidental bombing of the civilian population, hospitals and schools in North Vietnam. Plaintiff Davis sues on his own behalf and on behalf of all persons similarly situated who seek to exercise freely the rights guaranteed by the First Amendment to the Constitution of the United States to express, examine and advocate without fear of reprisal ideas and concepts critical of the current foreign and domestic policies of the United States government.

2. Plaintiff David Dellinger is a citizen of New York State and of the United States. Mr. Dellinger received his Bachelor of Arts from Yale University in Economics, Magna Cum Laude in 1936. In 1937 he was a Henry Fellow at New College, Oxford, England. He is a life-long pacifist and presently editor of Liberation, a monthly magazine devoted to changing the present social order by democratic and non-violent strategies. He is also chairman of the National Mobilization Committee to End the War in Vietnam, a broad coalition of anti-war forces. All of the activities of Mr. Dellinger are fully within the protection of the First Amendment to the Constitution of the United States and reflect the exercise of the fundamental rights of freedom of belief and thought and freedom of speech, assembly and the press.

3. Plaintiff Robert Greenblatt is a citizen of New York State and of the United States. He received a Bachelor of Arts in Mathematics from Brooklyn College and an M.A. and Ph.D. in Mathematics from Yale University in 1962 and 1963. Mr. Greenblatt was an Instructor and Assistant Professor of Mathematics at Cornell University from 1963-7. He was a founder of the Faculty Committee on Vietnam at Cornell University in 1965 and was active with Students for a Democratic Society and Resistance at Cornell. He was the Executive Vice-President of the Inter-University Committee for Debate on Foreign Policy in 1965-7. He was also the founder and co-chairman of the National Mobilization Committee to End the War in Vietnam and became the National Coordinator of the Mobilization Committee in the Summer of 1967, resigning from Cornell University to work full time for the Mobilization Committee. Mr. Greenblatt visited Hanoi and then Paris to confer with Mr. Averill Harriman and representatives of the Vietnamese government in the spring of 1968. All of Mr. Greenblatt's activities are fully within the protection of the First Amendment to the Constitution of the United States, and reflect the exercise of the fundamental rights of freedom of belief and thought and freedom of speech, assembly and the press, guaranteed by the First Amendment to the Constitution of the United States. Plaintiff Greenblatt has participated in many public meetings and gatherings protesting the present foreign policies of the government. He has been active and outspoken in expressing his dissent from the entire course of governmental policy in conducting the war in Vietnam. Plaintiff Greenblatt sues on his own behalf and on behalf of all persons similarly situated who seek to exercise freely the rights guaranteed in the First Amendment to the Constitution

of the United States to express and examine without fear of reprisal ideas and concepts critical of the current foreign and domestic policies of the Government.

4. Plaintiff Thomas Hayden is a citizen of New York State and the United States. Plaintiff Hayden received a B.A. degree from the University of Michigan and has lectured at said institution and at Rutgers, the State University of New Jersey. He was a founder of the Students for a Democratic Society, an organization dedicated to the expansion of human freedom, especially through the process of participatory democracy; said organization also postulates the necessity for fundamentally reorganizing American society. From 1964-7 he was community organizer in the Newark Community Union Project. He has lectured widely and has contributed articles on the war, on poverty and community organization, to numerous publications, including Ramparts, Liberation, and the New York Review of Books. He is also author of Rebellion in Newark and is co-author of The Other Side, an account of a visit to North Vietnam in 1966. In 1968 he was co-project director of the Chicago demonstration for the National Mobilization to End the War in Vietnam and is now a member of the steering committee of said organization. National Mobilization is an organization which is not only sharply critical of the present administration's conduct of the war in Vietnam but also plays a leadership role in mobilizing public opinion to change said conduct. All of the activities of plaintiff Hayden and the ideas explored and advanced by him to audiences and assemblages throughout the country are fully within the protection of the First Amendment to the Constitution of the United States, and reflect the exercise of the fundamental rights of freedom of belief and

thought, freedom of speech, assembly and the press, all guaranteed by the First Amendment to the Constitution of the United States. Plaintiff Hayden has participated in many public meetings and gatherings protesting the present foreign policies of the government. He has been active and outspoken in expressing his dissent from the entire course of governmental policy in conducting the war in Vietnam. Plaintiff Hayden sues on his own behalf and on behalf of all persons similarly situated who seek to exercise freely the rights guaranteed in the First Amendment to the Constitution of the United States to express and examine without fear of reprisal ideas and concepts critical of the current foreign and domestic policies of the government.

5. Plaintiff Abbie Hoffman is a citizen of New York State and of the United States. He was expelled from Classical High School in Worcester, Massachusetts for writing a paper questioning the existence of God and was then graduated from Worcester Academy fourth in his class. Mr. Hoffman received a B.A. degree in Psychology from Brandeis University in 1959 where he attained the status of Dean's list and received a scholarship to the University of California at Berkeley as a graduate student in Psychology. In May 1960 he participated in demonstrations protesting hearings of the Committee in San Francisco. Mr. Hoffman was employed as a State Psychiatrist in Worcester State Hospital from 1960-2. He was campaign manager for H. Stuart Hughes, peace candidate for the United States Senate in Massachusetts in 1962. He was the New England Coordinator for Friends of SNCC (Student Non-Violent Coordinating Committee) from 1962-5 and the vice-chairman of Massachusetts CORE. He participated in

demonstrations in Springfield, Massachusetts protesting the failure of the F. B. I. to protect civil rights workers in the South. Mr. Hoffman has been active in various other civil rights activities, including protesting discrimination in various cities throughout the South and in the North, teaching in a freedom school in McComb, Mississippi and working to register voters in the South. From September 1965-6 Mr. Hoffman was the sales coordinator for the Poor People Corporation, an organization for the establishment of and training for black craft co-operatives in the South. In September 1966 he opened Liberty House in New York, a distribution center for craft items made in the South under the auspices of the Poor Peoples Corporation. While engaged in civil rights activities Mr. Hoffman, along with Stokely Carmichael and others, was falsely arrested in Newport, Rhode Island in the summer of 1966, on charges which were later dismissed. Mr. Hoffman then filed suit for false arrest and recovered a judgment of $1,000.00. Mr. Hoffman was the coordinator for central and western Massachusetts for the political campaign of Thomas Adams, peace candidate for United States Senate for the Democratic Party from May-July 1966. Mr. Hoffman has been active in every phase of the peace movement during the past two years. He participated in the formation of the Youth International Party, subscribed to by Joseph Papp, Director of the New York Shakespeare Festival; Alan Ginsburg, well known poet; Timothy Leary, Judy Collins, Sharon Krebs, Phil Ochs and countless others from the art world. All of Mr. Hoffman's activities are fully within the protection of the First Amendment to the Constitution of the United States. Plaintiff Hoffman sues on his own behalf and on the behalf of all other persons similarly situated who seek to exercise freely the rights guaranteed by the

First Amendment to the Constitution of the United States to express, examine and advocate without fear of reprisal ideas and concepts critical of the current foreign and domestic policies of the United States Government.

6. Plaintiff Jerry Rubin is a citizen of New York State and of the United States. He has been a graduate student in sociology at the University of California at Berkeley, having done graduate work at the Hebrew University in Jerusalem, Israel and having received a B.A. in history from the University of Cincinnati in Ohio. Mr. Rubin was a reporter for five years on the staff of the Cincinnati Post-Times. Mr. Rubin has been active in the exercise of his First Amendment rights, primarily recently as a founder of the Youth International Party and previously as a member of the Vietnam Day Committee of Berkeley, California, which was devoted, among other things, to the achievement of peace in Vietnam through the withdrawal of American troops from that country and the creation of a government completely representative of the Vietnamese people without any interference from the United States. Mr. Rubin was previously called before this Committee in 1966. There again the Committee was attempting to investigate plaintiff Rubin's exercise of First Amendment Activities and to harass him for his outspoken dissent from present governmental policies. All of plaintiff Rubin's activities were fully within the protection of the First Amendment to the United States Constitution. Plaintiff Rubin is suing on his own behalf and on behalf of all those similarly situated who seek to exercise freely their rights under the First Amendment to the Constitution of the United States and to express and advocate without reprisal ideas and opinions critical of the current foreign and domestic policies of the government.

B. *Defendants*

7. Defendant Edwin E. Willis is a citizen of the State of Louisiana and of the United States. He is sued in his official capacity as Chairman of the Committee on Un-American Activities of the United States House of Representatives (hereafter, the "Committee"). Defendants, members of the Committee, are William M. Tuck, a citizen of the State of Virginia and of the United States, Richard H. Ichord, a citizen of the State of Missouri and of the United States, John C. Culver, a citizen of the State of Iowa and of the United States, John M. Ashbrook, a citizen of the State of Ohio and of the United States, Del Clawson, a citizen of the State of California and of the United States, Richard L. Roudebush, a citizen of the State of Indiana and of the United States and Albert W. Watson, a citizen of the State of South Carolina and of the United States. They are sued in their official capacities as members of the Committee. Defendant Ramsey Clark, a resident of the State of Virginia and citizen of the United States, is sued in his official capacity as Attorney General of the United States. Defendant David G. Bress, a resident of Washington, D. C. and a citizen of the United States, is sued in his official capacity of United States Attorney for the District of Columbia.

CLASS ACTION

8. Plaintiffs sue on behalf of themselves and on behalf of all others similarly situated. The members of their class are so numerous that joinder of them all is impracticable. The relevant questions of law and fact are common to all and are shared by them with their representatives. As the claims are common to all they will be fully and effectively

asserted by the named representatives. An adjudication of the rights of the individual representatives would as a practical matter be dispositive of the interests of all other members of the class.

Jurisdiction of the Court

9. The jurisdiction of the Court arises under 28 U. S. C. Sections 1331, 1332, 1343(3) and (4), 2201, 2202, 2282, and 2284; and under the Constitution of the United States and, in particular, under Article I, Section 9, Clause I, Article III, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto, The amount in controversy, exclusive of interest and costs, exceeds $10,000.

First Cause of Action

10. The defendants and each of them, acting in concert and with other persons whose identities are presently unknown to plaintiffs, have undertaken, endeavored and planned to subject plaintiffs and other citizens similarly situated to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

11. Pursuant to this undertaking, endeavor and plan, the defendants have caused to be issued and served upon Plaintiffs David Dellinger, Greenblatt, Hayden, Hoffman and Rubin certain subpoenas, a sample of which is attached hereto as Exhibit A, which direct the Plaintiffs to appear before the Committee in Washington, D. C. during the week of October 1, 1968.

12. The defendants have taken this action under color of the authority of the Legislative Reorganization Act of 1946, 60 Stat. 817 which enacts *inter alia* Rule XI of the Rules of the House of Representatives establishing the Charter of the Committee and under a resolution of the Committee purporting to authorize this investigation.

The statute and Rule XI state in pertinent part:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The authorizing resolution is set forth in full as Exhibit B attached hereto and made a part hereof.

13. The Legislative Reorganization Act and Rule XI establishing the charter of the Committee and the resolution purporting to authorize this investigation are void and illegal on their face, particularly in light of their origins and the setting within which the Committee has operated in the past, and as applied to these plaintiffs, in that they violate the Constitution of the United States and in particular Article I, Section 9, Clause 3, Article III, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth, and Fifteenth Amendments thereof, for the following reasons, among others:

asserted by the named representatives. An adjudication of the rights of the individual representatives would as a practical matter be dispositive of the interests of all other members of the class.

JURISDICTION OF THE COURT

9. The jurisdiction of the Court arises under 28 U. S. C. Sections 1331, 1332, 1343(3) and (4), 2201, 2202, 2282, and 2284; and under the Constitution of the United States and, in particular, under Article I, Section 9, Clause I, Article III, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto, The amount in controversy, exclusive of interest and costs, exceeds $10,000.

FIRST CAUSE OF ACTION

10. The defendants and each of them, acting in concert and with other persons whose identities are presently unknown to plaintiffs, have undertaken, endeavored and planned to subject plaintiffs and other citizens similarly situated to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

11. Pursuant to this undertaking, endeavor and plan, the defendants have caused to be issued and served upon Plaintiffs David Dellinger, Greenblatt, Hayden, Hoffman and Rubin certain subpoenas, a sample of which is attached hereto as Exhibit A, which direct the Plaintiffs to appear before the Committee in Washington, D. C. during the week of October 1, 1968.

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> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The authorizing resolution is set forth in full as Exhibit B attached hereto and made a part hereof.

13. The Legislative Reorganization Act and Rule XI establishing the charter of the Committee and the resolution purporting to authorize this investigation are void and illegal on their face, particularly in light of their origins and the setting within which the Committee has operated in the past, and as applied to these plaintiffs, in that they violate the Constitution of the United States and in particular Article I, Section 9, Clause 3, Article III, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth, and Fifteenth Amendments thereof, for the following reasons, among others:

(a) The statute and rule establishing the Committee and the authorizing resolution on their face and as applied to these plaintiffs violate the fundamental guarantees of freedom of speech, freedom of press, freedom of assembly, freedom of association, freedom of thought and belief, right to privacy and the right of citizens to petition their Government for a redress of grievances, all of which are guaranteed by the First Amendment to the Constitution of the United States.

(b) The statute and rule establishing the Committee and the authorizing resolution on their face are overly broad and vague in violation of the First Amendment to the Constitution of the United States. Their overbroad sweep, inhibits and deters the exercise of the rights of freedom of speech, press, assembly and association in violation of the First Amendment. The dragnet sweep of the provisions of Rule XI, the Legislative Reorganization Act and the resolution and their overbreadth create a chilling effect upon the exercise of First Amendment rights by the people of the United States.

(c) The statute and rule establishing the Committee and the authorizing resolution violate on their face and as applied the guarantees of due process of law contained in the Fifth Amendment to the Constitution of the United States in their provisions are vague and indefinite and fail to meet the requirement of certainty in statutes which are enforced by criminal sanctions.

(d) The statute and rule establishing the Committee and the authorizing resolution purport to authorize such a sweeping, unlimited and all-inclusive compulsory examination of witnesses in the protected areas of speech, press,

association and assembly and they violate the procedural requirements of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

(e) The delegation of authority by the Congress to the Committee, attempted in the statute and rule, is so vague, ambiguous and uncertain that it cannot support or authorize investigations by the Committee which may affect or deter citizens of the United States in their exercise of the rights of freedom of speech, press, assembly and association.

(f) The statute and rule establishing the Committee and the authorizing resolution violate on their face and as applied the fundamental right of American citizens to the privacy of their political beliefs, opinions and associations guaranteed by the First, Fourth, Ninth and Tenth Amendments to the Constitution of the United States.

(g) The statute and rule establishing the Committee both on their face and as evidenced by their origin and the setting within which the Committee has operated in the past, purport to establish a general authority in the Committee publicly to expose the private affairs of citizens without justification in terms of any legitimate legislative or investigatory function of Congress, all in violation of the Constitution of the United States and beyond and in excess of any powers vested to the Congress by the Constitution.

(h) The statute and rule establishing the Committee and the authorizing resolution purport to establish the creation of a governmental mechanism with the sole purpose and objective of forcing public disclosure of beliefs, opinions, expressions and associations of private citizens which may be unorthodox or unpopular, resulting in and creating and

stimulating public stigma, scorn and obloquy, all beyond any powers granted to the Congress by the Constitution and in violation of express constitutional prohibitions upon the Congress contained in the First, Ninth, and Tenth Amendments to the Constitution.

(i) The statute and rule establishing the Committee and the authorizing resolution on their face and as applied, purport to sanction a usurpation of the functions of the executive and judicial branches of the national government in open violation of the fundamental principle of separation of powers which underlies the Constitution of the United States.

(j) The statute and rule establishing the Committee and the authorizing resolution, on their face and as applied, violate the prohibition against Bills of Attainder set forth in Article I, Section 9, Clause 3 of the Constitution of the United States in that they purport to authorize and sanction the imposition of legislative punishment.

(k) The statute and rule establishing the Committee and the authorizing resolution, on their face and as applied, violate Article III of the Constitution of the United States vesting the Judicial Power of the United States in the Courts of the United States in that they purport to authorize and sanction the establishment of a legislative court to try, condemn, and punish citizens for the exercise of rights otherwise guaranteed to them, without the benefit of the protections also guaranteed, by the Sixth and other Amendments of the Constitution of the United States.

14. The actions and threatened actions of the defendants taken under color of these unconstitutional and void Acts of

Congress have been taken and will be taken solely for the purpose of embarrassing, harassing, and intimidating the plaintiffs and hundreds of thousands, if not millions, of American citizens and detering and discouraging the plaintiffs and these hundreds of thousands of citizens from the immediate exercise of rights, privileges and immunities secured to them by the Constitution of the United States and in particular the rights of freedom of speech, press, association and privacy and the fundamental constitutional right of American citizens to dissent from the domestic and foreign policies of the government. The defendants seek to obtain these objectives by causing to be held up to public obloquy and scorn all citizens and those who aid them, who have expressed unpopular or dissident views with respect to the present functioning of the political system in the United States and in particular regarding the lack of free choice of political leaders and candidates, racism, and the war in Vietnam. The defendants and each of them know full well that there is no legitimate purpose underlying threatened compulsory investigation into plaintiffs' exercise of First Amendment rights and that one of the primary purposes of the threatened compulsory investigation under color of these unconstitutional acts of Congress is to deter and intimidate American citizens from exercising in the open market place of ideas the basic right of all citizens under the Constitution to vigorously present even unpopular or dissident views. There being no legitimate legislative purpose to be served by these hearings, they are further being used to improperly influence the November, 1968 elections.

15. Furthermore, the defendants and each of them, threaten and continue to threaten to utilize federal criminal

statutes, in particular the criminal sanctions of Title 2 U. S. C. Section 192, to enforce against plaintiffs their illegal and void compulsory investigations into plaintiffs' exercise of First Amendment rights. Defendants threaten and continue to threaten to cause to be instituted against plaintiffs criminal proceedings under Title 2 U. S. C. Section 192 if plaintiffs refuse to submit to defendants' threatened unconstitutional and void investigations into their exercise of First Amendment rights. These criminal proceedings which defendants imminently threaten to cause to be invoked against plaintiffs will be instituted in bad faith, without any hope of ultimate success, and only to discourage the plaintiffs' exercise of rights guaranteed to them under the Constitution of the United States.

16. Unless this Court restrains the operation and enforcement of the void, invalid and unconstitutional Act of Congress and Rule XI which it incorporates, and the authorizing resolution, and unless this Court restrains the threatened criminal proceedings under Title 2 U. S. C. Section 192, plaintiffs and members of their class will suffer immediate and irreparable injury in that:

(a) The threatened compulsory investigation into plaintiffs' exercise of First Amendment rights under color of these unconstitutional Acts of Congress and pursuant to these void and illegal subpoenas, unless restrained by this Court, will result in immediate and irreparable injury to fundamental constitutional rights guaranteed to these plaintiffs and hundreds of thousands of citizens similarly situated in that the threatened compulsory investigations will immediately have the effect of deterring plaintiffs, the class of citizens they represent and countless other citizens

from exercising fundamental rights of free speech, press, assembly, association and privacy, the right to petition for redress of grievances and in particular the fundamental right to dissent from the domestic and foreign policies of their government. Unless this Court grants the relief prayed, substantial loss and impairment of freedom of expression will occur if plaintiffs are required to await the culmination of the inevitably long, drawn-out threatened criminal proceedings under Title 2 U. S. C. Section 192 and ultimate review by the Supreme Court of the United States.

(b) The threatened criminal proceedings, unless restrained by this Court, will have an immediate and irreparable chilling effect upon the exercise of fundamental First Amendment rights unaffected by the prospects of the success or failure of the threatened criminal proceedings under Title 2 U. S. C. Section 192. The threatened compulsory investigation under color of these void and unconstitutional acts of Congress will have an immediate and irreparable chilling effect upon the exercise of basic First Amendment freedoms, including the historic and traditional right of Americans to dissent from the domestic and foreign policies of the government, by countless hundreds of thousands of American citizens who will be deterred from exercising these rights. This creates a threat of immediate and irreparable injury to the fundamental interests of the Nation, since free expression—of transcendant value to all society and not merely to those exercising their rights—will be the victim.

(c) The threatened compulsory investigation into plaintiffs' exercise of First Amendment rights, and the threatened criminal proceedings, unless restrained by this Court, will result in serious and irreparable injury to the right of

plaintiffs and all American citizens to exercise the freedom of assembly and association protected by the First Amendment in that many citizens will be deterred, frightened and intimidated from joining or associating themselves with organizations, committees or other associations plaintiffs are associated with or other organizations and associations which hold views or conduct activities in whole or in part similar to these with which the plaintiffs are associated. In particular, unless the threatened unconstitutional acts of defendants are restrained by this Court, many citizens will be deterred from associating themselves with organizations or associations of citizens expressing views critical of the present policies of the government.

(d) The threatened compulsory investigation into plaintiffs' exercise of First Amendment rights, as well as the threatened criminal proceedings, unless restrained by this Court, will result in a serious and substantial, clear, present and imminent threat to the national interest and security in that the widespread resultant chilling effect upon the fundamental right of American citizens to dissent, through the exercise of First Amendment liberties, will have a grave effect upon the fundamental right of American citizens to participate in the decisional processes which affect the destinies of the Nation.

Second Cause of Action

Plaintiffs repeat and re-allege paragraphs 8 through 16 above and further allege:

17. On information and belief, a federal grand jury has been convened and presently is sitting in Chicago, Illinois, The announced purpose of that grand jury is to investigate

the events of the weeks prior to and during the sessions of the Democratic Party National Convention, including the role of plaintiffs herein and members of their class in those events under investigation. Agents of Defendant Clark, upon information and belief, in order to facilitate the grand jury proceeding, have been widely deployed and are presently engaged in probing and investigating plaintiffs' participation in the events surrounding the Democratic Party National Convention.

18. The Executive and Judicial branches of the federal government have already entered upon an investigation of the same events in Chicago concerning which the defendants seek to enforce subpoenas against plaintiffs here.

19. Inasmuch as the federal executive may call upon the federal judiciary to try any violations of federal criminal law and since only the federal judiciary may try such violations of federal law, the attempt to do the same on the part of this Congressional Committee will result in a violation of the doctrine of the separation of powers and an unconstitutional invasion by the Committee into the constitutionally-granted jurisdiction of the executive and judicial branches.

20. Furthermore, plaintiffs Hayden, Hoffman and Rubin were among the several hundreds of persons who were arrested on charges of violation of state law in Chicago, Illinois, during the week of August 26, 1968 and when the Democratic Party National Convention was in session, and thereafter. The numerous charges pending against plaintiffs are of a serious nature and trials on those charges will doubtless occur in the near future. To allow, at this time,

a Congressional Committee investigation into the very activities that form the basis of those pending criminal proceedings would violate the most fundamental due process right of plaintiffs.

21. Unless this Court restrains and enjoins the threatened compulsory investigation into plaintiffs' First Amendment activities, especially those alleged activities of plaintiffs which may be the subject of a federal grand jury investigation presently underway, and those activities which form the bases for numerous arrests and charges already pending against plaintiffs and some of them, plaintiffs will suffer not only the injuries alleged in paragraph 16 above, but they will further suffer an immediate and irreparable violation of their most fundamental rights to due process of law.

22. Plaintiffs have no adequate remedy at law.

WHEREFORE plaintiffs pray for the following relief:

1) That pursuant to Title 28, U. S. C. Sections 2282 and 2284, a three-judge federal district court be immediately convened to hear and determine this proceeding;

2) That a permanent injunction issue:

(a) restraining the defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from the enforcement, operation, or execution in any way whatever of Rule XI, of the Rules of the House of Representatives establishing the Committee on Un-American Activities of the House of Representatives, the Legislative Reorganization Act of

1946, 60 Stat. 812, insofar as that Act incorporates and sets forth Rule XI, and the resolution of the committee authorizing this investigation; and

(b) restraining the defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from impeding, intimidating, hindering, and preventing plaintiffs and all other persons similarly situated, from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States; and

(c) restraining defendants and each of them, their agents, employees, and attorneys, and all others acting in concert with them, and their successors from attempting to institute or from instituting any criminal proceedings against the plaintiffs and/or other persons similarly situated in an effort to enforce the subpoenas issued to the plaintiffs by the defendants purportedly requiring their attendance and testimony before the House on Un-American Activities during the week of October 1, 1968 or any adjourned date thereof; and

(d) ordering the defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors to seal the records, notations and other written references to plaintiffs and the members of their class and any of them which are or may presently be in the control and possession of the Committee so that such records and files are absolutely closed and inaccessible for any purpose.

3) That a declaratory judgment issue declaring that Rule XI of the Rules of the House of Representatives establishing the Committee on Un-American Activities of the

House of Representatives, the Legislative Reorganization Act of 1946, 60 Stat. 812, insofar as it incorporates and sets forth Rule XI and the authorizing resolution violate on their face and as applied the Constitution of the United States and are therefore null, void and of no effect.

4) And that pending the hearing and determination of the prayers for permanent relief the Court enter an interlocutory injunction restraining the defendants, their agents, employees and attorneys, and all others acting in concert with them from

(a) attempting in any way to enforce the subpoenas issued by the defendants to the plaintiffs purporting to require their attendance and testimony before the Committee; and

(b) issuing further subpoenas to plaintiffs or members of their class purporting to require their attendance and testimony before further hearings of the Committee; and

(c) attempting to institute or from instituting criminal proceedings pursuant to Title 2 U. S. C. Section 192 against the plaintiffs in an effort to enforce the subpoenas issued to the plaintiffs by the defendants purportedly requiring their attendance and testimony before the Committee during the week of October 1, 1968.

5) And for such other relief as may seem to this Court to be appropriate.

Respectfully submitted,

ARTHUR KINOY
511 Fifth Ave.
N. Y., N. Y. 10017
212 MU 2-8317

WILLIAM M. KUNSTLER
1860 Ingleside Terrace, N.W.
Washington, D. C. 20010
202—234-3019

MORTON STAVIS
HARRIET VAN TASSEL
116 Market St.
Newark, N. J. 60612
201—622-1467

Attorneys for Jerry Rubin

MICHAEL J. KENNEDY
HENRY M. DI SUVERO
25 E. 26th St.
N. Y., N. Y. 10010
212—683-8120

Attorneys for Rennie Davis and Thomas Hayden

SANFORD KATZ
30 E. 42nd St.
New York, N. Y.
212—OX 7-8640

LUBELL & LUBELL
103 Park Avenue
N. Y., N. Y. 10017
212—889-5290

Attorneys for Robert Greenblatt

GERALD LEFCOURT
18 East 64th St.
N. Y., N. Y.
212—PL 9-5189

WILLIAM M. KUNSTLER

Attorneys for Abbie Hoffman

ARTHUR KINOY
WILLIAM M. KUNSTLER
MORTON STAVIS
HARRIET VAN TASSEL
JEREMIAH S. GUTMAN
NANCY STEARNS
363 Seventh Ave.
N. Y., N. Y. 10001
212—CH 4-6670

MELVIN WULF
156 Fifth Ave.
New York, N. Y. 10010
212 OR 5-5990

Attorneys for David Dellinger

Of Counsel:

STANLEY A. BASS
11 South La Salle St.
Chicago, Ill.

IRV BIRNBAUM
11 South La Salle St.
Chicago, Ill.

NORMAN OLCH
104-40 Queens Blvd.
Forest Hills, Queens, N. Y.

TED STEIN
201 E. 18th St.
Brooklyn, N. Y.

APPENDIX B

Complaint for Injunctive and Declaratory Relief

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2455-68

QUENTIN YOUNG, 1418 East 55th Street, Chicago, Illinois, on his own behalf and on behalf of all those similarly situated,

Plaintiff,

VS.

EDWIN E. WILLIS, WILLIAM M. TUCK, RICHARD H. ICHORD, JOHN C. CULVER, JOHN M. ASHBROOK, DEL CLAWSON, RICHARD L. ROUDEBUSH, and ALBERT W. WATSON, as Chairman and Members of the Committee on Un-American Activities of the United States House of Representatives, House Office Building, Washington, D. C.; and RAMSEY CLARK, as Attorney General of the United States, Department of Justice, Washington, D. C.; and DAVID BRESS as United States Attorney for the District of Columbia, United States Courthouse, Washington, D. C.,

Defendants.

Parties

A. *Plaintiff*

1. Plaintiff Quentin Young is a citizen of the State of Illinois and of the United States. He is a practicing physician in the City of Chicago, Illinois. He received his B.S. in Medicine from Northwestern University in 1945, his M.D. from Northwestern University in 1947, and his Master of Science and Physiology from the University of Illinois in 1952. Dr. Young is a member of the governing council and executive committee of the Medical Committee for Human Rights and a member of the executive committee of the Chicago chapter of the Medical Committee for Human Rights (MCHR). He was the immediate past chairman of the National MCHR as well as past chairman of the Chicago chapter and is presently the Editor of Health Rights News, a publication of the MCHR. Dr. Young teaches at the University of Illinois College of Medicine and is advisor to the Student Health Organization, an association of medical students. He is a member of the American Medical Association and of the Council of the Chicago Medical Society. Dr. Young is also a member of the Planning Committee for Health Care of the Inner City of the National Health Council. All of the activities of Plaintiff Dr. Young are fully within the protection of the First Amendment to the Constitution of the United States and reflect the exercise of the fundamental rights of freedom of belief and thought, freedom of speech, assembly and the press. Plaintiff Dr. Young sues on his own behalf and on behalf of the persons similarly situated who seek to exercise freely the rights guaranteed in the First Amendment to the Constitution of the United States.

B. *Defendants*

2. Defendant Edwin E. Willis is a citizen of the State of Louisiana and of the United States. He is sued in his official capacity as Chairman of the Committee on Un-American Activities of the United States House of Representatives (hereafter, the "Committee"). Defendants, members of the Committee, are William M. Tuck, a citizen of the State of Virginia and of the United States; Richard H. Ichord, a citizen of the State of Missouri and of the United States; John C. Culver, a citizen of the State of Iowa and of the United States; John M. Ashbrook, a citizen of the State of Ohio and of the United States; Del Clawson, a citizen of the State of California and of the United States; Richard L. Roudebush, a citizen of the State of Indiana and of the United States; and Albert W. Watson, a citizen of the State of South Carolina and of the United States. They are sued in their official capacities as members of the Committee.

Defendant Ramsey Clark, a resident of the State of Virginia and citizen of the United States, is sued in his official capacity as Attorney General of the United States.

Defendant David G. Bress, a resident of Washington, D. C. and citizen of the United States, is sued in his official capacity of United States attorney for the District of Columbia.

Class Action

3. Plaintiff sues on his own behalf and on behalf of all others similarly situated. The members of the class are so numerous that joinder of them all is impracticable. The relevant questions of law and fact are common to all and are shared by them with their representative. As the claims are common to all they will be fully and effectively as-

serted by the named representative. An adjudication of the rights of the individual representative would as a practical matter be dispositive of the interests of all other members of the class.

Jurisdiction of the Court

4. The jurisdiction of the Court arises under 28 U. S. C. §§1331, 1332, 1343(3) and (4), 2201, 2202, 2282, and 2284; and under the Constitution of the United States and, in particular, under Article I, Section 9, Clause 3, Article III, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto. The amount in controversy, exclusive of interest and costs, exceed $10,000.00.

FIRST CAUSE OF ACTION

5. The defendants and each of them, acting in concert and with other persons whose identities are presently unknown to plaintiff, have undertaken, endeavored and planned to subject the plaintiff and other citizens similarly situated to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

6. Pursuant to this undertaking, endeavor and plan, the defendants have caused to be issued and served upon Plaintiff Dr. Young a subpoena, a sample of which is attached hereto as Exhibit A, which directs the plaintiff to appear before the Committee in Washington, D. C. during the week of October 1, 1968.

In pursuance of the plan and endeavor of defendants, they have caused a registered letter to be mailed to Plaintiff Dr. Young, which letter offers plaintiff an opportunity

to appear in executive session before the Committee to respond to certain charges alluded to in the letter. (The letter also warns plaintiff Dr. Young that failure to appear Monday, September 30, 1968 in Washington, D. C. "voluntarily" may lead to his enforced appearance by subpoena.) A copy is annexed as Exhibit B.

7. The defendants have taken this action under color of the authority of the Legislative Reorganization Act of 1946, 60 Stat. 817 which enacts *inter alia* Rule XI of the Rules of the House of Representatives establishing the Charter of the Committee and under a resolution of the Committee purporting to authorize this investigation. The statute and Rule state in pertinent part:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The authorizing resolution states:

> "WHEREAS, the Committee on Un-American Activities has received evidence over a period of months that Communist, pro-Communist and other cooperating subversive elements within the National Mobilization Committee to End the War in Vietnam, Students for a Democratic Society, Youth International Party and

various other organizations were planning disruptive acts and violence in the City of Chicago, Illinois, during the week of August 25, 1968; and,

WHEREAS, evidence in the possession of the Committee on Un-American Activities reveals that a number of the Communist, pro-Communist, and other subversive organizations and individuals named in the Committee's report of April, 1967, entitled, 'Communist Origin and Manipulation of Vietnam Week,' as having planned and organized that subversive activity, also were leading planners and organizers of the aforementioned disruption and acts of violence in Chicago, Illinois, during the week of August 25, 1968; and

WHEREAS, the Chairman of the Committee on Un-American Activities on two occasions, May 13 and June 26, 1968, informed Members of Congress of the abovementioned subversive elements' plans and organization for such disruptive acts in Chicago, Illinois, during the week of August 25, 1968 (Congressional Record, May 13, 1968, page H3698, and June 26, 1968, page H5698, respectively) and,

WHEREAS, the Subcommittee on Appropriations, House of Representatives, subsequent to the Chairman's initial remarks on the subject, released executive testimony of J. Edgar Hoover confirming what the Chairman had stated;

NOW THEREFORE, for the purposes, and pursuant to the authority, contained in Rule XI, paragraph 18, of the House of Representatives Resolution 7, 90th Congress:

BE IT RESOLVED, that investigation be made, and hearings be held by the Commitee on Un-American Ac-

tivities, or a subcommittee thereof appointed by the Chairman for that purpose, in Washington, D. C., or at such place or places, and on such date or dates, as the Chairman may designate, relating to the extent, character, and objectives of Communist propaganda, foreign or domestic, and Communist activities within the United States to advance the objectives and purposes of the world Communist movement and in aid of foreign Communist governments and organizations, with particular reference to determining the extent to which and the manner in which, the incidents and acts of force and violence which occurred in the City of Chicago, Illinois, during the week of August 25, 1968, were planned, instigated, incited, or supported by Communist and other subversive organizations and individuals, and all other questions in relation to the above, which will provide factual information to aid the Congress in the proposal, consideration of, or the enactment of any necessary remedial legislation, in fulfillment of the authority and directives contained in Rule XI, paragraph 18, of the House of Representatives Resolution 7, 90th Congress . . . "

8. The Legislative Reorganization Act and Rule XI establishing the charter of the Committee and the resolution purporting to authorize this investigation are void and illegal on their face, particularly in light of their origins and the setting within which the Committee has operated in the past, and as applied to plaintiff, in that they violate the Constitution of the United States and in particular Article I, Section 9, Clause 3, Article III, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth,

Fourteenth, and Fifteenth Amendments thereof, for the following reasons, among others:

(a) The statute and rule establishing the Committee and the authorizing resolution on their face and as applied to plaintiff violate the fundamental guarantees of freedom of speech, freedom of press, freedom of assembly, freedom of association, freedom of thought and belief, right to privacy —particularly between a physician and his patients—and the right of citizens to petition their Government for a redress of grievances, all of which are guaranteed by the First and Ninth Amendments to the Constitution of the United States.

(b) The statute and rule establishing the Committee and the authorizing resolution on their face are overly broad and vague in violation of the First Amendment to the Constitution of the United States. Their overbroad sweep inhibits and deters the exercise of the rights of freedom of speech, press, assembly and association in violation of the First Amendment. The dragnet sweep of the Legislative Reorganization Act and the resolution provisions and of Rule XI and their overbreadth create a chilling effect upon the exercise of First Amendment rights by the people of the United States.

(c) The statute and rule establishing the Committee and the authorizing resolution violate on their face and as applied the guarantees of due process of law contained in the Fifth Amendment to the Constitution of the United States in that their provisions are vague and indefinite and fail to meet the requirement of certainty in statutes which are enforced by criminal sanctions.

(d) The statute and rule establishing the Committee and the authorizing resolution authorize such a sweeping, un-

limited and all-inclusive compulsory examination of witnesses in the protected areas of speech, press, association and assembly that they violate the procedural requirement of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

(e) The delegation of authority by the Congress to the Committee, attempted in the statute and rule, is so vague, ambiguous and uncertain that it cannot support or authorize investigations by that Committee which may affect or deter citizens of the United States in their exercise of the rights of freedom of speech, press, assembly and association.

(f) The statute and rule establishing the Committee and the authorizing resolution violate on their face and as applied the fundamental right of American citizens to the privacy of their political beliefs, opinions and associations guaranteed by the First, Fourth, Ninth and Tenth Amendments to the Constitution of the United States.

(g) The statute and rule establishing the Committee both on their face and as evidenced by their origin and the setting within which the Committee has operated in the past, purport to establish a general authority in the Committee publicly to expose the private affairs of citizens without justification in terms of any legitimate legislative or investigatory function of Congress, all in violation of the Constitution of the United States and beyond and in excess of any powers vested in the Congress by the Constitution.

(h) The statute and rule establishing the Committee and the authorizing resolution purport to establish the creation of a governmental mechanism with the sole purpose and objective of forcing public disclosure of beliefs, opin-

ions, expressions and associations of private citizens which may be unorthodox or unpopular, resulting in and creating and stimulating public stigma, scorn and obloquy, all beyond any powers granted to the Congress by the Constitution and in violation of express constitutional prohibitions upon the Congress contained in the First, Ninth and Tenth Amendments to the Constitution.

The statute and rule establishing the Committee and the authorizing resolution on their face and as applied, purport to sanction a usurpation of the functions of the executive and judicial branches of the national government in open violation of the fundamental principle of separation of powers which underlies the Constitution of the United States.

(j) The statute and rule establishing the Committee and the authorizing resolution, on their face and as applied, violate the prohibition against Bills of Attainder set forth in Article I, Section 9, Clause 3 of the Constitution of the United States in that they purport to authorize and sanction the imposition of legislative punishment.

(k) The statute and rule establishing the Committee and the authorizing resolution on their face and as applied, violate Article III of the Constitution of the United States vesting the Judicial Power of the United States in the Courts of the United States in that they purport to authorize and sanction the establishment of a legislative court to try, condemn and punish citizens for the exercise of rights, otherwise guaranteed to them without the benefit of the protections also guaranteed to them by the Sixth and other Amendments of the Constitution of the United States.

9. The actions and threatened actions of the defendants taken under color of these unconstitutional and void Acts of Congress have been taken and will be taken for the purpose of embarrassing, harassing, and intimidating the plaintiff and hundreds of thousands, if not millions, of American citizens and deterring and discouraging the plaintiff and these hundreds of thousands of citizens from the immediate exercise of rights, privileges and immunities secured to them by the Constitution of the United States and in particular the rights of freedom of speech, press, association and privacy, particularly with regard to a doctor and his patient, and the fundamental constitutional right of American citizens to dissent from the domestic and foreign policies of the government. The defendants seek to obtain these objectives by causing to be held up to public obloquy and scorn all citizens and those who aid them who have expressed unpopular or dissident views with respect to the present functioning of the political system in the United States and in particular regarding the lack of free choice of political leaders and candidates, racism, and the war in Vietnam. The Medical Committee for Human Rights, in which Plaintiff Dr. Young is an active participant, is engaged in a program of providing medical services to persons, who because of their economic or social positions, or because of the unpopularity of their political activities, beliefs and expressions find it difficult or impossible to secure medical services from governmental or other sources. The defendants and each of them know full well that there is no legitimate purpose underlying threatened compulsory investigation into plaintiff's exercise of First Amendment rights and that one of the primary purposes of the threatened compulsory investigations under color of these unconstitutional acts of Congress is to deter and

intimidate American citizens from exercising in the open market place of ideas the basic right of all citizens under the Constitution to vigorously present even unpopular or dissident views. There being no legitimate legislative purpose to be served by these hearings, they are further being used to improperly influence the November, 1968 elections.

10. Furthermore, the defendants and each of them, threaten and continue to threaten to utilize federal criminal statutes, in particular the criminal sanctions of Title 2 U. S. C. § 192, to enforce against plaintiff their illegal and void compulsory investigations into plaintiff's exercise of First Amendment rights. Defendants threaten and continue to threaten to cause to be instituted against plaintiff criminal proceedings under Title 2 U. S. C. § 192 if plaintiff refuses to submit to defendants' threatened unconstitutional and void investigations into his exercise of First and Ninth Amendments and other constitutional rights. These criminal proceedings which defendants imminently threaten to cause to be invoked against plaintiff will be instituted in bad faith, without any hope of ultimate success and only to discourage the plaintiff's exercise of rights guaranteed to him under the Constitution of the United States.

11. Unless this Court restrains the operation and enforcement of the void, invalid and unconstitutional Act of Congress and Rule XI which it incorporates and the authorizing resolution and unless this Court restrains the threatened criminal proceedings under Title 2 U. S. C. § 192, plaintiff and members of his class will suffer immediate and irreparable injury in that:

(a) The threatened compulsory investigation into plaintiff's exercise of First Amendment rights under color of these unconstitutional Acts of Congress and pursuant to these void and illegal subpoenas, unless restrained by this Court, will result in immediate and irreparable injury to fundamental constitutional rights guaranteed to this plaintiff and hundreds of thousands of citizens similarly situated in that the threatened compulsory investigations will immediately have the effect of deterring plaintiff, the class of citizens he represents and countless other citizens from exercising fundamental rights of free speech, press, assembly, association and privacy, particularly in the physician-patient relationship, the right to petition for redress of grievances and in particular the fundamental right to dissent from the domestic and foreign policies of the government. Unless this Court grants the relief prayed, substantial loss and impairment of freedom of expression will occur if plaintiff is required to await the culmination of the inevitably long, drawn-out threatened criminal proceedings under Title 2 U. S. C. § 192 and ultimate review by the Supreme Court of the United States.

(b) The threatened criminal proceedings, unless restrained by this Court, will have an immediate irreparable chilling effect upon the exercise of fundamental First Amendment rights unaffected by the prospects of the success or failure of the threatened criminal proceedings under Title 2 U. S. C. § 192. The threatened compulsory investigation under color of these void and unconstitutional acts of Congress will have an immediate and irreparable chilling effect upon the exercise of basic First Amendment freedoms, including the historic and traditional right of Americans to dissent from the domestic and foreign policies of the government, by countless hundreds of thousands of

American citizens who will be deterred from exercising these rights. This creates a threat of immediate and irreparable injury to the fundamental interests of the Nation, since freedom expression—of transcendent value to all society and not merely to those exercising their right will be the victim.

(c) The threatened compulsory investigation into plaintiff's exercise of First Amendment rights, and the threatened criminal proceedings, unless restrained by this Court, will result in serious and irreparable injury to the right of plaintiff and all American citizens to exercise the freedom of assembly and association protected by the First Amendment in that many citizens will be deterred, frightened and intimidated from joining or associating themselves with organizations, committees or other associations plaintiff is associated with or other organizations and associations which hold views or conduct activities in whole or in part similar to those of MCHR. In particular, unless the threatened unconstitutional acts of defendants are restrained by this Court, many citizens will be deterred from associating themselves with organizations or associations of citizens expressing views critical of the present policies of the government, or, offering medical or similar services to needy persons who may include those critical of their government's policies or activities.

(d) The threatened compulsory investigation into plaintiff's exercise of First Amendment rights, as well as the threatened criminal proceedings, unless restrained by this Court, will result in a serious and substantial, clear, present and imminent threat to the national interest and security in that the widespread resultant chilling effect upon the fundamental right of American citizens to dissent, through the

exercise of First Amendment liberties, will have a grave effect upon the fundamental right of American citizens to participate in the decisional processes which affect the destinies of the Nation.

Second Cause of Action

Plaintiff repeats and re-alleges paragraphs 5 through 11 above and further alleges:

12. On information and belief, a federal grand jury has been convened and presently is sitting in Chicago, Illinois. The announced purpose of that grand jury is to investigate the events of the weeks prior to and during the sessions of the Democratic Party National Convention, including the role of plaintiff herein and members of his class in those events under investigation. Agents of defendant Clark, upon information and belief, in order to facilitate the grand jury proceeding, have been widely deployed and are presently engaged in probing and investigating plaintiff's participation in the events surrounding the Democratic Party National Convention.

13. The Executive and Judicial branches of the federal government have already entered upon an investigation of the same events in Chicago concerning which the defendants seek to enforce subpoenas against plaintiff here.

14. Inasmuch as the federal Executive will call upon the federal judiciary to try any violations of federal criminal law and since only the federal judiciary may try such violations of federal law, the attempt to do the same on the part of this Congressional Committee will result in a violation of the doctrine of the separation of powers and an unconstitutional invasion by the Committee into the consti-

tutionally granted jurisdiction of the Executive and Judicial branches.

15. Unless this Court restrains and enjoins the threatened compulsory investigations into plaintiff's First Amendment activities, especially those alleged activities of plaintiff which may be the subject of a federal grand jury investigation presently underway, plaintiff will suffer the injuries alleged in paragraph 11 above.

16. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays for the following relief:

1) That pursuant to Title 28, U. S. C. §§2282 and 2284, a three judge federal district court be immediately convened to hear and determine this proceeding;

2) That a permanent injunction issue:

(a) restraining the defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from the enforcement, operation, or execution in any way whatever of Rule XI, of the Rules of the House of Representatives establishing the Committee on Un-American Activities of the House of Representatives, the Legislative Reorganization Act of 1946, 60 Stat. 812, insofar as that Act incorporates and sets forth Rule XI, and the resolution of the Committee authorizing this investigation, and

(b) restraining the defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from impeding, intimidating, hindering, and preventing plaintiff and all other persons similarly situated from exercising the rights,

privileges, and immunities guaranteed to them by the Constitution and laws of the United States; and

(c) restraining defendants and each of them, their agents, employees, and attorneys, and all others acting in concert with them, and their successors from attempting to institute or from instituting any criminal proceedings against the plaintiff or other persons similarly situated in an effort to enforce the subpoena issued to the plaintiff by the defendants purportedly requiring his attendance and testimony before the House Committee on Un-American Activities during the week of October 1, 1968; and

(d) ordering the defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors to seal the records, notations and other written references to plaintiff and the members of his class and any of them which are or may presently be in the control and possession of the Committee so that such records and files are absolutely closed and inaccessible for any purposes.

3) That a declaratory judgment issue declaring that Rule XI of the Rules of the House of Representatives establishing the Committee on Un-American Activities of the House of Representatives, the Legislative Reorganization Act of 1946, 60 Stat. 812, insofar as it incorporates and sets forth Rule XI and the authorizing resolution violate on their face and as applied the Constitution of the United States and are therefore null, void and of no effect.

4) And that pending the hearing and determination of the prayers for permanent relief the Court enter an interlocutory injunction restraining the defendants, their agents, employees and attorneys, and all others acting in concert with them from

(a) attempting in any way to enforce the subpoena issued by the defendants to the plaintiff purporting to require his attendance and testimony before the Committee; and

(b) issuing further subpoenas to plaintiff or members of his class purporting to require their attendance and testimony before further hearings of the Committee; and

(c) attempting to institute or from instituting criminal proceedings pursuant to Title 2 U. S. C. §192 against the plaintiff in an effort to enforce the subpoena issued to the plaintiff by the defendants purportedly requiring his attendance and testimony before the Committee during the week of October 1, 1968.

5) And for such other relief as may seem to this Court to be appropriate.

Respectfully submitted,

ARTHUR KINOY, Esq.
511 Fifth Avenue
New York, New York 10017

JEREMIAH S. GUTMAN, Esq.
363 Seventh Avenue
New York, New York 10001

WILLIAM M. KUNSTLER, Esq.
1025 33d St. N.W.
Washington, DC
337 4466

Nancy Stearns, Esq.
363 Seventh Avenue
New York, New York 10001

Harriet Van Tassel, Esq.
511 Fifth Avenue
New York, New York 10017

City of Washington,
District of Columbia, *ss.*:

Quentin Young, being duly sworn, deposes and says:

That deponent is the plaintiff in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Sworn to before me, this
2nd day of October, 1968.

Jurat

EXHIBIT A

Copy

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

1529

To Quentin David Young, GREETING:

PURSUANT to lawful authority, YOU ARE HEREBY COMMANDED to be and appear before the Committee on Un-American Activities of the House of Representatives of the United States, or a duly appointed subcommittee thereof, on Tuesday, October 1, 1968, at ten o'clock a.m., at their Committee Room, 309 Cannon House Office Building, Washington, D.C., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee.

YOU ARE HEREBY COMMANDED to bring with you and produce before said committee, or a duly authorized subcommittee thereof, the following:

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To Herbert Rommerstein/William McMahon, to serve and return.

GIVEN under my hand this 19th day of September, in the year of our Lord, 1968.

/s/ E. E. WILLIS

Chairman—Chairman of Subcommittee—Member Designate of the Committee on Un-American Activities of the House of Representatives.

If you desire a conference with a representative of the Committee prior to the date of the hearing, please call or write to: Staff Director, Committee on Un-American Activities, Washington 25, D.C., Telephone: CApitol 4-3121—Ext. 3051.

EXHIBIT B

(Letterhead of Congress of the United States, House of Representatives, Committee on Un-American Activities, Washington, D. C. 20515)

September 20, 1968

Dr. Quentin David Young
1512 East 55th Street
Chicago, Illinois 60615

Dear Dr. Young:

A subcommittee of the Committee on Un-American Activities has received evidence in executive session that a person of the same name as yours, a resident of Chicago, Illinois, has been a member of the Communist Party U. S. A., in the Chicago area.

Pursuant to Rule XI, 26(m), of the House of Representatives (see pages VII and VIII of the Committee Rules of Procedure enclosed herewith) the opportunity is being afforded you voluntarily to appear as a witness before the subcommittee in executive session on Monday, September 30, 1968, at 10:00 a. m. in Room 311, Cannon House Office Building, Washington, D. C., for the purpose of enabling you to affirm, deny, qualify or comment on the above-mentioned evidence, and to request, if you wish, the subpoena of additional witnesses.

Due to the pressure of other Committee and Congressional business, the subcommittee may be able to have you appear before it on some day prior to September 30 if you so desire, but it cannot assure you that it will be able to

hear you at a time subsequent to September 30 and prior to release of the evidence.

Although the nature of the evidence concerning you will not be supplied at this time and will not be publicly released until you have had an opportunity to respond to same, under the conditions and within the time specified herein, it will be provided to you should you voluntarily appear before the subcommittee in response to this offer.

The subject matter and purpose of the Committee's investigation is set forth in the enclosed copy of the Committee's Resolution authorizing same.

The Committee's Rules of Procedure, 1965 edition, enclosed and referenced above were readopted without change by Committee Resolution on February 1, 1967. The House Rules, reproduced in the Committee's Rules of Procedure (pp. VI, VII, and VIII) were readopted without change by House Resolution 7, dated January 10, 1967.

In a proceeding under House Rule XI, 26(m), you would be the only witness during the executive session tendered you. In this respect it is my duty to advise you that should it appear necessary to do so, the record in this matter could be referred to the Department of Justice for resolution of conflicting evidence received pertaining to the matter in question, and for such legal action as may be warranted respecting any violation of any Federal statutes, including those relating to perjury, which may be involved.

You have the right to be accompanied by counsel at the hearing mentioned above, and in this connection, your attention and that of your counsel, should you engage same, is invited to House Rule 26(k), page VII, and to Committee Rules VII and VIII, page 4 of the enclosed copy of Com-

mittee Rules of Procedure. You will note that the Rules of both the House and of the Committee do not provide for cross-examination of other witnesses by the counsel for the witness appearing before the Committee. Counsel is privileged *only* to advise *you* as to your legal rights.

This letter is not a subpoena or summons requiring you to appear before the subcommittee for the purpose aforesaid. Therefore, should you decide to take advantage of the opportunity being afforded you herein voluntarily to appear before the subcommittee for the purpose and under the provisions specifically stipulated herein, you are requested to communicate your affirmative decision in this respect to the Director of the Committee no later than 10:00 p. m., Saturday, September 28, 1968. Otherwise, it will be assumed you do not wish to do so and that the subcommittee has fully complied with House Rule XI, 26(m).

The Director of the Committee may be reached at Room 309 Cannon House Office Building, Washington, D. C. 20515, telephone Area Code 202, 225-3051, during normal working hours. In the event you wish to reach him on September 28 and he is not in the office, you may call him at his home, Area Code 301, 365-4005.

Sincerely yours,

/s/ E. E. Willis
Edwin E. Willis
Chairman

Enclosures

1. Copy of Rules of Procedure
   Committee on Un-American Activities
   House of Representatives
2. Committee Resolution authorizing
   investigation and hearings

APPENDIX C

Supplemental Complaint

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2411-68

RENARD G. DAVIS, *et al.*,

Plaintiffs,

—v.—

EDWIN E. WILLIS, *et al.*,

Defendants.

---

and

Civil Action No. 2455-68

QUENTIN YOUNG,

Plaintiff,

—v.—

EDWIN E. WILLIS, *et al.*,

Defendants.

Plaintiffs in this consolidated action supplement their Complaint for injunctive and declaratory judgment relief herein by alleging in addition to all of the allegations set forth in their respective Complaints the following, which have occurred since the dates of both:

23. On February 18, 1969, the House of Representatives voted to amend Rule XI and Rule X of the House of Representatives, changing the name of the House Committee on Un-American Activities to the Committee on Internal Security and changing the wording of its authorizing resolution to state as follows:

H. Res. 89

RESOLVED, That Rule XI of the Rules of the House of Representatives is amended—

1) by striking out clause 19;

2) by renumbering clauses 11 through 18 as clauses 12 through 19, respectively; and

3) by inserting immediately after clause 10 the following new clause:

1. Committee on Internal Security

a). Communist and other subversive activities affecting the internal security of the United States.

b). The Committee on Internal Security, acting as a whole or by the subcommittee, is authorized to make investigations from time to time of (1) the extent, character, objectives, and activities within the United States of organizations or groups, whether of foreign or domestic origin, their members, agents, and affiliates, which seek to establish or assist in the establishment of a totalitarian dictatorship within the United States, or to overthrow or alter, or assist in the overthrow or alteration of, the form of government of the United States or of any State thereof, by force, violence, treachery, espionage, sabotage, in-

surrection, or any unlawful means, (2) the extent, character, objectives, and activities within the United States of organizations or groups, their members, agents, and affiliates, which incite or employ acts of force, violence, terrorism, or any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States, and (3) all other questions, including the administration and execution of any law of the United States, or any portion of law, relating to the foregoing that would aid the Congress or any committee of the House in any necessary remedial legislation.

The Committee on Internal Security shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Internal Security, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by such chairman, and may be served by any person designated by any such chairman or member.

Sec. 2(a). Rule X of the Rules of the House of Representatives is amended—

(1) by striking out clause 1(s);

(2) by redesignating clauses 1(k) through 1(r) as clauses 1(l) through 1(s), respectively; and

(3) by inserting immediately after clause 1(j) the following:

(k) Committee on Internal Security to consist of nine Members.

(b) Clause 31 or Rule XI of the Rules of the House of Representatives is amended by striking out "Un-American Activities" and inserting in lieu thereof "Internal Security".

Sec. 3. As of the date of adoption of this resolution all property (including records) of the Committee on Un-American Activities is hereby transferred to the Committee on Internal Security and shall be available for use by the latter committee to the same extent as if such property (including records) was originally that of the Committee on Internal Security.

Sec. 4. Nothing of this resolution shall affect (1) the validity of any action or proceeding of the Committee on Un-American Activities or of the House of Representatives before the date of adoption of this resolution, or (2) the validity of any action or proceeding by any officer or agency of the executive branch of the Government, or by any court of competent jurisdiction, based on any action or proceeding referred to in clause (1) of this sentence. Any

action or proceeding referred to in clause (2) of the preceding sentence and pending on the date of adoption of this resolution shall be continued by the officer, agency, or court concerned in the same manner and to the same extent as if this resolution had not been adopted.

24. Rule XI as amended by H. Res. 89, (hereinafter referred to as the mandate) is unconstitutionally void and illegal on its face and violative of the United States Constitution and in particular Article I, Sec. 9, Clause 3; Articles I & II, and the First, Fourth, Fifth, Sixth, Ninth, Tenth, Thirteenth, Fourteenth, and Fifteenth Amendments, for all of the reasons set forth in paragraph 9 of the Complaint and Supplemental Complaint.

25. Defendants, acting under the color of the unconstitutional and illegal mandate are acting and threaten to continue to act in violation of all the constitutional and legal rights of the plaintiffs and the class of citizens they represent as previously charged in the Complaint and Supplemental Complaint.

26. As set forth above, Sec. 2(a) of the unconstitutional and illegal mandate provides that all property, including the files of the Committee on Un-American Activities be retained and used by it under its new name and authorization.

27. The files of the Committee on Un-American Activities are composed of dossiers on thousands of individuals and over 900 organizations containing derogatory information concerning their political and personal activities and associations which operate as an illegal and unconstitutional

political blacklist, which have been and continue to be used over the more than twenty year history of the Committee to harass and intimidate citizens and to deter, discourage and prevent them from exercising their rights guaranteed under the United States Constitution. These dossiers are utilized with the consent and assistance of defendants in violation of the United States Constitution on a regular daily basis by most or all of the major departments of the United States Government to discriminate against citizens with respect to their employment or prospective employment. The dossiers have been and are being consistently utilized with the consent and assistance of defendants in violation of the United States Constitution by agencies of state and local governmental bodies throughout the United States to discriminate against citizens and deny them their right to employment and personal and political freedom of association. The dossiers have been and are being consistently utilized by private industry with the consent and assistance of defendants in violation of the United States Constitution, as a political blacklist to discriminate against citizens and to deny them employment. They are also made available by defendants and other private groups, including but not limited to, labor unions, educational institutions, civic and political groups as a political blacklist to discriminate against citizens, deny them employment, deter them from freely expressing their political opinions and otherwise to deter them from exercising their constitutional rights. The defendants also give access to such dossiers to vigilante and paramilitary groups of private citizens which abuse and use such lists for the purpose of intimidating American citizens in their local communities to deter and prevent them from freely exercising their rights guaranteed under the United States Constitution.

28. The maintenance and use of such a political blacklist by a committee of the House of Representatives is wholly without constitutional and statutory authority and violates the Constitution of the United States and in particular Article I, Section 9, Clause 3, Articles I and II, and the First, Fourth, Fifth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments for the following reasons:

a) The use of this political blacklist operated by a Committee of the House of Representatives is a built in Bill of Attainder in violation of Article I, Section 9, Clause 3;

b) The use of this political blacklist creates a dragnet which harasses, chills and deters citizens from joining organizations and otherwise exercising their rights of political and personal expression and association in violation of the First Amendment;

c) The use of this political blacklist is in violation of the Fourth Amendment in that much of the derogatory material and false charges contained within it has been and continues to be obtained as a result of illegal search and seizure.

d) The use of this political blacklist punishes citizens by depriving them of their right to employment without due process in violation of the First Amendment.

e) The use of this political blacklist submits citizens to cruel and unusual punishment by denying them and their families their livelihood and submitting them and their families to ostracism by their communities in violation of the Eighth Amendment.

f) The use of this political blacklist completely violates the right to privacy of individuals in their freedom to as-

sociate and privacy in their associations in violation of the First Amendment and other rights under the Fourth, Fifth, Ninth and Fourteenth Amendments;

g) The use of this political blacklist against black citizens and others who seek to aid them operates to maintain black citizens in a position of inferiority, bound by the badges and indicia of slavery in violation of the Thirteenth, Fourteenth and Fifteenth Amendments.

29. The names of and derogatory information and false charges concerning the political and personal associations and activities of the plaintiffs are contained in the dossiers of the Committee as a result of the issuance of subpoenas ordering them to appear before a hearing of the Committee in October and December 1968. Such derogatory information concerning their associations and activities was gathered from other witnesses and sources. Accordingly, plaintiffs are and will continue to be immediately and irreparably injured by the use and threat of the use of this political blacklist against them in violation of the United States Constitution, and in particular, Article I, Section 9, Clause 3; Articles I and III; and the First, Fourth, Fifth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments.

30. The plaintiff class for purposes of this supplemental complaint remains all persons who seek to exercise freely their rights guaranteed in the First Amendment of the Constitution of the United States to express and examine, without fear of reprisal, ideas and concepts critical of the domestic and foreign policies of their Government.

31. The names of and derogatory information and false charges concerning the political and personal associations and activities of members of the plaintiff class are contained within the thousands of dossiers which the Committee maintains and continues to supplement and thus the plaintiff class is imminently threatened with:

a) additional degrading information, innuendoes and false charges concerning them being added to those dossiers by means of illegal search and seizure in violation of the Fourth Amendment;

b) loss and denial of private, Federal and State employment without due process in violation of the Fifth and Fourteenth Amendments;

c) cruel and unusual punishment by loss of employment and social and economic ostracism by their communities in violation of the Eighth Amendment;

d) loss of their freedom to associate and privacy of associations in violation of the First Amendment and other rights under the Fourth, Fifth, Ninth and Fourteenth Amendments;

e) loss of the rights of black members of the class to shed themselves of the badges and indicia of slavery and attain true equality under the United States Constitution in violation of the Thirteenth, Fourteenth and Fifteenth Amendments.

32. No adequate remedy at law exists for plaintiffs and the class they represent.

WHEREFORE, plaintiffs pray for the following relief:

1. All preliminary and permanent injunctive relief and declaratory relief prayed for in the original and supplemental complaints;

2. In addition, a judgment declaring that Rule XI, as amended by H. Res. 89, is void and unconstitutional;

3. In accordance with that judgment, that the files of the House Committee on Un-American Activities, now in possession of the committee operating under the name of the Committee on Internal Security, be impounded by the Court and that a permanent injunction be issued preventing any use of the material in those files by defendants or others except upon such conditions as the Court may prescribe that will protect the plaintiffs and the class they represent;

4. In the meantime and until further order of this Court, an injunction preventing the defendants and their agents, servants, attorneys and employees from disclosing any material from such files except under such circumstances as this Court may provide for in its order;

5. Such other relief as this Court shall deem appropriate.

(To all Attorneys of Record.)

APPENDIX D

Order

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2441-68

RENARD G. DAVIS, *et al.*,

Plaintiffs,

—v.—

EDWIN E. WILLIS, *et al.*,

Defendants.

and

Civil Action No. 2455-68

QUENTIN YOUNG,

Plaintiff,

—v.—

EDWIN E. WILLIS, *et al.*,

Defendants.

The consolidated causes having come before the Court on June 25, 1969 on plaintiffs' motion to add two staff employees of the Congress as parties defendant to these actions and on defendants' motion to dismiss the supplemental complaint filed herein on May 16, 1969, and the Court

having considered the pleadings, briefs and other papers filed herein, and having heard the oral argument of counsel for all parties, and it appearing to the Court that there is no sufficient reason to add those proposed parties defendant to these actions; that the plaintiffs have suggested and all parties have agreed that the Attorney General of the United States and the United States Attorney should be dropped as parties defendant to these actions; and it appearing to the Court that the defendants' motion to dismiss the supplemental complaint should be granted for the reason that the plaintiffs have no standing to sue in these cases as of this time, that there is an adequate remedy at law open to the plaintiffs to protect their rights in the event they should be indicted or any criminal action brought against them, that former Rule 11 of the House of Representatives is no longer in effect, and, in any event, that former Rule 11 is constitutional, that there is no justiciable issue presently presented by current House Resolution 89 and, in any event, that House Resolution 89 is constitutional, and that the Court should not issue a declaratory judgment since the Court could not fashion a suitable decree to carry out any declaratory judgment such as is requested by plaintiffs, and there is no justiciable issue before the Court at this time on which the Court could render a declaratory judgment, it is, therefore, by the Court this 3rd day of July, 1969:

ORDERED, ADJUDGED and DECREED that the plaintiffs' motion to add parties defendant be, and the same hereby is denied; and it is

FURTHER ORDERED, ADJUDGED and DECREED that the Attorney General of the United States and the United States

Attorney be, and they hereby are, dropped as parties defendant to these actions; and it is

FURTHER ORDERED, ADJUDGED and DECREED that defendants' motion to dismiss be, and the same hereby is, granted and that each action be, and the same hereby is, dismissed.

GEORGE L. HART, JR.
United States District Judge

FILED
JUL 3—1969

ROBERT M. STEARNS
Clerk

APPENDIX E

Opinion of United States District Judge George L. Hart, Jr.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action 2441-68

RENARD G. DAVIS, *et al.*,

Plaintiffs,

—v.—

EDWIN E. WILLIS, *et al.*,

Defendants.

Civil Action 2455-68

QUENTIN YOUNG,

Plaintiff,

—v.—

EDWIN E. WILLIS, *et al.*,

Defendants.

Washington, D. C.
Wednesday, June 25, 1969

Court ruling on hearing in the above-named matter before the Honorable George L. Hart, Jr., a Judge of the

United States District Court, Wednesday morning, 11:00 a.m. June 25, 1969.

Appearances:

JEREMIAH GUTMAN, Esq.
NANCY STEARNS, Esq.
on behalf of plaintiffs

KEVIN T. MARONEY, Esq. and
BENJAMIN C. FLANNAGAN, Esq.
on behalf of the defendants.

Court's Ruling on Motion
Argued on Wednesday, June 25, 1969 in U. S.
District Court, Washington, D. C.

The Court: Well, first, as I have already announced, I deny the motion to add parties defendant. Second, the action will be dismissed as to the Attorney General and the U. S. Attorney, I take it without objection of the plaintiffs.

Third, I grant the government's Motion to Dismiss for several reasons: One, the plaintiffs have no standing to sue in this case, in this Court's opinion, as of this time. They have an adequate remedy at law as, if and when any action is taken against them by the House Un-American Activities Committee to bring them before them.

As to old House Rule 11, that, in the opinion of the Court, is no longer in effect, and therefore, there is no need really to rule on it except not knowing or wanting it remanded just for that purpose. In the event some appellate court decided it should be decided, I would hold, in any event, it is constitutional, Rule 11.

As to current House Rule 89, it does not seem to this Court that this presents a justiciable issue at this time. But again, in any event, I hold it constitutional.

Is there anything I have missed, counsel for the government?

Mr. Maroney: May we just confer a moment, your Honor?

The Court: Yes. I may say here that this Court can consider by no means whatever that it could fashion a decree to carry out any declaratory judgment that the Court might give, and there is no issue here really at this time on which the Court could declare any declaratory judgment. But if it did, there would be no way this Court could figure that it could be enforced.

Anything else?

Mr. Maroney: No, sir.

The Court: Would you present an order?

Mr. Maroney: Yes, sir.

(Whereupon, at 12:29 p.m., the hearing was concluded.)

Certificate of Reporter

I certify this transcript is true and correct.

MARIE S. TAYLOR

APPENDIX F

Legislative Reorganization Act of 1946, Rule XI, 60 Stat. 812

PUBLIC LAW 601, 79TH CONGRESS

The legislation under which the House Committee on Un-American Activities operates is Public Law 601, 79th Congress [1946]; 60 Stat. 812, which provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * *

PART 2—RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

SEC. 121. STANDING COMMITTEES

* * * * *

17. Committee on Un-American Activities, to consist of nine Members.

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * *

(q)(1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United

States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * *

APPENDIX G

91st CONGRESS, 1st SESSION, H. RES. 89

RESOLVED, That Rule XI of the Rules of the House of Representatives is amended—

1) by striking out clause 19;

2) by renumbering clauses 11 through 18 as clauses 12 through 19, respectively; and

3) by inserting immediately after clause 10 the following new clause:

1. Committee on Internal Security

a). Communist and other subversive activities affecting the internal security of the United States.

b). The Committee on Internal Security, acting as a whole or by the subcommittee, is authorized to make investigations from time to time of (1) the extent, character, objectives, and activities within the United States of organizations or groups, whether of foreign or domestic origin, their members, agents, and affiliates, which seek to establish or assist in the establishment of a totalitarian dictatorship within the United States, or to overthrow or alter, or assist in the overthrow or alteration of, the form of government of the United States or of any State thereof, by force, violence, treachery, espionage, sabotage, insurrection, or any unlawful means, (2) the extent, character, objectives, and activities within the United States of organizations or groups, their members, agents, and affiliates,

which incite or employ acts of force, violence, terrorism, or any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States, and (3) all other questions, including the administration and execution of any law of the United States, or any portion of law, relating to the foregoing that would aid the Congress or any committee of the House in any necessary remedial legislation.

The Committee on Internal Security shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Internal Security, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by such chairman, and may be served by any person designated by any such chairman or member.

Sec. 2(a) Rule X of the Rules of the House of Representatives is amended—

(1) by striking out clause 1(s);

(2) by redesignating clauses 1(k) through 1(r) as clauses 1(l) through 1(s), respectively; and

(3) by inserting immediately after clause 1(j) the following:

(k) Committee on Internal Security to consist of nine Members.

(b) Clause 31 or Rule XI of the Rules of the House of Representatives is amended by striking out "Un-American Activities" and inserting in lieu thereof "Internal Security."

Sec. 3. As of the date of adoption of this resolution all property (including records) of the Committee on Un-American Activities is hereby transferred to the Committee on Internal Security and shall be available for use by the latter committee to the same extent as if such property (including records) was originally that of the Committee on Internal Security.

Sec. 4. Nothing of this resolution shall affect (1) the validity of any action or proceeding of the Committee on Un-American Activities or of the House of Representatives before the date of adoption of this resolution, or (2) the validity of any action or proceeding by any officer or agency of the executive branch of the Government, or by any court of competent jurisdiction, based on any action or proceeding referred to in clause (1) of this sentence. Any action or proceeding referred to in clause (2) of the preceding sentence and pending on the date of adoption of this resolution shall be continued by the officer, agency, or court concerned in the same manner and to the same extent as if this resolution had not been adopted.

APPENDIX H

Opinion of the Court Below

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1968 — APRIL SESSION, 1969

Nos. 17406, 17407

JEREMIAH STAMLER, M.D and YOLANDA F. HALL,

Plaintiffs-Appellants,

and

MILTON M. COHEN,

Intervening Plaintiff-Appellant,

—v.—

HON. EDWIN E. WILLIS, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

August 5, 1969

Before SWYGERT and CUMMINGS, *Circuit Judges,* and ESCHBACH, *District Judge.*[1]

CUMMINGS, *Circuit Judge.* This appeal results from a decree dismissing actions against certain members of Congress, the Attorney General of the United States and the United States Attorney for the Northern District of Illinois, challenging the constitutionality of Rule XI of the House of Representatives establishing the charter of the House Un-American Activities Committee, and seeking appropriate relief.

The three plaintiffs were subpoenaed to appear before a subcommittee of said Committee in Chicago on May 25, 1965. On May 24, plaintiffs instituted their first action against the chairman and members of the Committee seeking a declaratory judgment that Rule XI was unconstitutional and an injunction restraining the enforcement of the Rule and the holding of the scheduled hearings. On the same day, the district court, relying on *Barenblatt* v. *United States,* 360 U.S. 109, dismissed the complaint.

Following the May 25-27 Chicago hearings of the subcommittee, plaintiffs commenced a second action, alleging misconduct on the part of the Committee and again seeking declaratory and injunctive relief. This suit was also dismissed by the district court. Both dismissal orders were reversed and remanded by this Court with directions that a 3-judge court be convened to consider the complaints. *Stamler* v. *Willis,* 371 F.2d 413. After a 3-judge court was designated, the plaintiffs were indicted for contempt of

[1] Judge Eschbach is sitting by designation from the United States District Court for the Northern District of Indiana.

Congress in violation of 2 U.S.C. § 192, growing out of occurrences at the May 25-27 hearings, the cases were consolidated for trial, and the pleadings were supplemented to include a prayer for an injunction against the prosecution of the criminal actions.

Subsequently the 3-judge court granted summary judgment for the Congressional defendants on the ground that the Speech or Debate Clause contained in Article I, Section 6, Clause 1 of the Constitution[2] afforded a complete legal defense to the actions. *Stamler* v. *Willis,* 287 F.Supp. 734 (N.D.Ill. 1968).[3] The dissenting opinion concluded that the Speech or Debate Clause was no bar to the maintenance of this declaratory or injunctive action (287 F.Supp. at pp. 739-744). The plaintiffs' appeals to the Supreme Court were first dismissed (393 U.S. 217) and then remanded to the (single-judge) district court for the entry of a fresh decree (393 U.S. 407).[4]

Upon remand, the district judge entered another decree resembling the earlier one (reported in 287 F.Supp. 734) but dismissing the complaints under the Speech or Debate Clause instead of granting summary judgment for the defendants. We hold that the complaints should not have

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[2] The Speech or Debate Clause provides "the Senators and Representatives * * * for any Speech or Debate in either House * * * shall not be questioned in any other Place."

[3] In printing the majority opinion, page 10 was inadvertently omitted from the last paragraph thereof on p. 739.

[4] Apparently the reason for the Supreme Court's order was its view that Rule XI of the House Committee was not equivalent to an Act of Congress, so that a 3-judge court was not required under 28 U.S.C. §§ 2282 and 2284. *Krebs* v. *Ashbrook,* 275 F.Supp. 111 (D.D.C. 1967), affirmed, 407 F.2d 306 (D.C. Cir. 1969), certiorari denied, 393 U.S. 1026. See also *Powell* v. *McCormack,* —— U.S. ——, ——, note 3.

been dismissed *in toto* and therefore remand the cause for consideration of the merits.

The district court held that the action against the Attorney General and the United States Attorney, "being ancillary to the claims against the Congressional defendants," must fall with the action against the Congressional defendants.[5] But as early as *Stockdale* v. *Hansard,* 9 Ad. & El. 1 (1839), and certainly by the time of *Kilbourn* v. *Thompson,* 103 U.S. 168, it was clearly established that liability, including personal tort liability, could be imposed on an official for following orders given to him by the legislature, even though the legislators could not be held personally accountable. This is exactly what happened to the Sergeant-at-Arms of the House in *Kilbourn.* The principle was reaffirmed in *Dombrowski* v. *Eastland,* 387 U.S. 82, where the Supreme Court ordered that a tort action go to trial as against Senate Subcommittee Counsel Sourwine, while at the same time dismissing the action as against Senator Eastland.

In *Powell* v. *McCormack,* —— U.S. ——, the Supreme Court recently construed the scope of the defense provided by the Speech or Debate Clause. The Court found it unnecessary to decide (1) whether the Clause would be a bar if the Congressmen were not acting in the sphere of legitimate legislative activity, or (2) assuming that they were acting in the sphere of legitimate legislative activity, whether the fact that the petitioners were not seeking damages or a criminal prosecution would lift the bar of the Clause. The Court decided only that agents and employees of the House who were joined as defendants were not entitled to plead the Speech or Debate Clause as a bar

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[5] Dismissal of these executive officers was criticized in Comment, 43 N.Y.U. L.Rev. 1227, 1228, note 11 (1968).

to maintenance of an action against them. Although not determining the applicability of the defense to the Congressmen themselves, the Court dismissed the action against members of the House because "Petitioners are entitled to maintain their action against House employees and to judicial review of the propriety of the action to exclude Petitioner Powell" (—— U.S. at p. ——). The Court felt that the availability of complete relief against non-Congressional defendants was sufficient reason to dismiss the suit against the Congressmen.

Applying this rationale to the present case, we hold that this consolidated action may be dismissed against the Congressmen since plaintiffs have conceded that "a judgment against the prosecutors will afford appellants [plaintiffs] all the relief they request, including a declaratory judgment that Rule XI is unconstitutional, and an injunction restraining prosecution of the criminal cases." Therefore, as in the *Powell* case, we need not decide whether under the Speech or Debate Clause the plaintiffs would be entitled to maintain this action solely against members of Congress where no other remedy was available (see —— U.S. at p. ——, note 26).

Notwithstanding plaintiffs' assertion that continuation of this action against the Attorney General and the United States Attorney will suffice, in view of our decision to dismiss the Congressional defendants from this action, it may develop that complete relief cannot be accorded plaintiffs in the event that they are successful on the merits unless appropriate agents of the House Committee are served and joined as defendants below. Fed. R. Civ. P. 19(a)(1). Because of the effect of the *Powell* decision, which was announced after the appeal in the present action was filed, this case will be remanded with leave to amend the complaint to add such additional parties defendant if the

plaintiffs so request. Cf. *Bryan* v. *Austin,* 354 U.S. 933. Since the Congressional defendants have had notice of the pendency of this action from its inception, no prejudice will result from permitting the joinder of agents of the Committee for the sole purpose of making effective relief possible in this declaratory and injunctive action. See *County Theatre Co.* v. *Paramount Film Distr. Corp.,* 166 F.Supp. 221 (E.D.Pa. 1958); *Denver* v. *Forbes,* 26 F.R.D. 614 (E.D.Pa. 1960). In addition, the defense of Congressional immunity was not raised until late in the proceedings, and while we need not now decide whether this affirmative defense was waived by failure to raise it earlier (see 287 F.Supp. at p. 740, note 1), the interests of justice will be served by permitting amendment, if desired by plaintiffs, in order to compensate for the effects of this tardily asserted defense.

The Government strongly urges, and the decree below assumes, that these plaintiffs' constitutional claims can be raised by way of motions to dismiss or defenses to their criminal prosecutions, concluding that the district court should have declined to assert jurisdiction over this consolidated declaratory and injunctive action. Although it is true that the substantial constitutional issues raised in the civil complaint might be disposed of in a motion to dismiss the contempt indictments, the two proceedings are by no means coterminous. The criminal proceedings may well result in dismissal, acquittal or conviction without reaching the question of the overbreadth of Rule XI and its alleged chilling effect on the exercise of First Amendment rights. Additionally, more suitable discovery procedures and more liberal rules of evidence are available in the civil action to throw light on the serious

constitutional questions presented. Nor does it appear at this stage of the litigation that a criminal trial would be a more expeditious means of reaching a final resolution. Plaintiffs should not be compelled to go through years of criminal litigation as in *Gojack* v. *United States,* 384 U.S. 702, where the defendant had to stand trial twice, was convicted twice, appealed unsuccessfully twice, obtained a new trial from the Supreme Court and finally the dismissal of charges against him in the Supreme Court.

We are of the opinion that under the circumstances of this case the district court should not abstain from asserting jurisdiction over complaints challenging a rule or statute "justifiably attacked on [its] face as abridging free expression, or as applied for the purpose of discouraging protected activities." *Dombrowski* v. *Pfister,* 380 U.S. 479, 489-490, see also *Reed Enterprises* v. *Corcoran,* 354 F.2d 519, 523 (D.C. Cir. 1965). Even more than in *Dombrowski,* these plaintiffs are entitled to an adjudication of their civil complaint. There the allegedly overbroad statute was new and had not been judicially construed, so that any threat to free expression might have been obviated *ad limine.* Here it is alleged that the interpretation put on Rule XI during the approximately 30 years of the Committee's existence exacerbates the overbreadth of the Rule. In *Stamler* v. *Willis,* 371 F.2d 413 (7th Cir. 1966), we held that these complaints present a substantial constitutional question, and that the breadth of Rule XI should be measured against the Committee's conduct over the years. Cf. *Watkins* v. *United States,* 354 U.S. 178, 198, 202; *Gojack* v. *United States,* 384 U.S. 702, 711-712. Our *Stamler* opinion contemplated that this

re-examination was to occur in this proceeding rather than in subsequent criminal proceedings. Therefore we hold that the civil litigation should proceed to the long-delayed trial on the merits.

We conclude that plaintiffs' claims should be considered on the merits even though a coordinate branch of the Government is involved. The judiciary has always borne the basic responsibility for protecting individuals against unconstitutional invasions of their rights by all branches of the Government.[6] Thus the Supreme Court has overturned a major policy decision of the President because he exceeded his powers in seizing the steel mills. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579. And the Court has ruled that an Act of Congress designed to prevent members of the Communist Party from holding jobs in defense facilities, and action taken pursuant to that Act by the Secretary of Defense, was unconstitutional because it placed a greater restraint on First Amendment freedoms than was necessary to guard against espionage and sabotage. *United States* v. *Robel,* 389 U.S. 258. Most recently, the Court determined that federal courts have jurisdiction to review the lawfulness of the exclusion of a duly elected member of Congress despite the constitutional authority of the House to judge the qualifications of its members. *Powell* v. *McCormack,* —— U.S. ——. The Congress has no more right, whether through legislation or investigations conducted under an overbroad enabling Act, to abridge the First Amendment freedoms of the people, than do the other branches of government, "For free expression—of transcendent value to all society, and not merely to those exercising their rights—might be

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[6] See Legislative Exclusion: Julian Bond and Adam Clayton Powell, 35 Univ. of Chi.L.Rev. 151, 164-166 (1967).

the loser." *Dombrowski* v. *Pfister, supra,* at p. 486. As Judge Medina observed in *Wolff* v. *Selective Service Local Board No. 16,* 372 F.2d 817, 824-825 (2d Cir. 1967):

> "Where basic constitutional rights are imperiled, the courts have not required a series of injured parties to litigate the permissible scope of the statute or administrative interpretation but have nullified the unconstitutional action and required the Government to start in the first instance with a statute or interpretation that will not so overhang free expression that the legitimate exercise of constitutionally protected rights is suppressed."

There *Dombrowski* was applied to prevent federal interference with First Amendment rights (372 F.2d at p. 824).

If these plaintiffs should ultimately prevail in this consolidated action, members of Congress will not be imperiled in their Congressional functions but merely have to conduct their future investigations under a narrower, constitutional mandate. A decision for plaintiffs here would signify no less respect for a coordinate branch of the Government then would a like decision in the criminal prosecutions. Thus permitting this action to proceed will have no chilling effect on the legislators' performance of their duties. Cf. Note, 78 Harv. L. Rev. 1473, 1475 (1965).

Relying on *Golden* v. *Zwickler,* 394 U.S. 103, the defendants argue that the present controversy was rendered moot by the filing of the indictments against plaintiffs. There Zwickler's conviction under a New York statute had been reversed, and the state proceedings were at an end. Therefore, when the Congressman who was the ob-

ject of Zwickler's critical handbill became a judge, the Court found that no concrete question remained to justify continuing the federal declaratory judgment action. In contrast, the United States has indictments for contempt pending against these plaintiffs, so that the issues raised in this consolidated action are still very much alive and suitable for declaratory relief. See *Dombrowski* v. *Pfister*, 380 U.S. 479, 488 and note 5.[7]

While this case proceeds to trial,[8] the trials of the related criminal cases must be deferred. We will assume that the remaining defendants will abide by this judgment without the necessity of entering injunctive relief against the present prosecution of those indictments.

Judgment affirmed as to dismissal of the Congressional defendants; judgment reversed and remanded as to the dismissal of the remaining defendants.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

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[7] In view of the pendency of the indictments, we must also reject the argument that the subsequent formal changes in Rule XI and in the name of the Committee renders the case moot. See *Powell* v. *McCormack*, —— U.S. ——, ——.

[8] The Government has taken the opportunity of this appeal to reargue questions of standing, jurisdiction, justiciability, venue, separation of powers, want of equity, and substantiality of the federal questions presented by the complaints. Such contentions have been considered and decided adversely to the Government in *Stamler* v. *Willis*, 371 F.2d 413 (7th Cir. 1966), and in the unanimous November 8, 1967, denial of the Government's motion to dismiss and need not be reconsidered here. On remand the parties should develop the necessary factual predicate and direct their legal arguments to the substantive questions of the constitutionality of Rule XI raised in the original complaints.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Nos. 23426 and 23427

RENARD G. DAVIS, et al.,

Plaintiffs-Appellants,

-against-

EDWIN E. WILLIS, et al.,

Defendants-Appellees.

AND

QUENTIN YOUNG,

Plaintiff-Appellant

-against-

EDWIN E. WILLIS, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS

ARTHUR KINOY
MORTON STAVIS
NANCY STEARNS
588 Ninth Avenue
New York, New York

HENRY M. diSUVERO
25 East 26th Street
New York, New York

JEREMIAH S. GUTMAN
363 Seventh Avenue
New York, New York

SANFORD KATZ
30 East 42nd Street
New York, New York

LUBELL & LUBELL
103 Park Avenue
New York, New York

GERALD LEFCOURT
37 Union Square West
New York, New York

MELVIN WULF
156 Fifth Avenue
New York, New York

WILLIAM M. KUNSTLER
PHILIP J. HIRSCHKOP
1025 33rd Street, N.W.
Washington, D.C.

ATTORNEYS FOR PLAINTIFFS-APPELLANTS

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Nos. 23426 and 23427

RENARD G. DAVIS, et al.,

Plaintiffs-Appellants,

-against-

EDWIN E. WILLIS, et al.,

Defendants-Appellees.

---

and

QUENTIN YOUNG,

Plaintiff-Appellant,

-against-

EDWIN E. WILLIS, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS

Since the filing by appellants of their Brief and Appendix herein, information has come to light concerning a major department of government, the Department of Health, Education and Welfare, which should help to crystalize for

this Court certain of the constitutional questions raised by appellants herein. Articles by Richard D. Lyons in the New York Times of October 12 and 20, 1969, have made it clear that appellants' allegations of government blacklists are all too true and that for years HEW has maintained such blacklists for reasons of "security" and "suitability", based on political beliefs or personal associations. As appellants noted in their Brief filed in this Court on October 6, 1969, at least one of the major sources of that blacklist is the files of HUAC/HISC, challenged herein.*

Appellees argue that appellants have no standing to raise the constitutional questions raised herein because they are no longer subject to contempt and therefore criminal prosecution. Appellants contend that the very real threat of other injury, such as the blacklisting of the "hundreds" of scientists which has only recently been revealed (New York Times, October 20, 1969) constitutes ample damage to justify judicial consideration of the constitutional issues presented herein. This Court stated only last year in the case of Curran v. Clifford, No. 21040, December 27, 1968, D.C.Cir., slip opinion, p. 5, that the test of standing must be "...sufficiently flexible to expand and contract as our ideas

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* The New York Times of October 20, 1969, notes that one of the blacklisted scientists was a witness before a Congressional

(Footnote continues on next page)

of who should be allowed to challenge different ideas of the government's action evolve and grow". Appellees have argued on p. 40-43 of their brief that appellants have no greater interest than the public at large in asserting the constitutional questions herein. This is plainly not the case. Appellants have alleged that as a result of the subpoenas issued to them, information concerning their alleged political associations is contained in the Committee's files and they are subject to very real damage as a result. Certainly in the terms of Flast v. Cohen, 392 U.S. 83, 99 (1968), cited by appellees, they have:

> "'... such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional questions.'"

Appellees have further represented that, in any event, under the rule of Douglas v. Jeannette, 319 U.S. 157 (1943), appellants are precluded from raising their constitution questions in a civil arena. Appellees have apparently chosen to ignore the many developments in First Amendment law which have occurred since 1943, particularly, with Dombrowski v.

(fn. continued from preceding page)
committee in the early 1950s -- in fact that scientist was a witness before this very Committee on May 10, 1954, Investigation of Communist Activities in the State of Michigan, Part 6. Note also the directive by those charged with guarding the President to establish dossiers on sweeping array of dissidents - dossiers - which are to encompass the widest range of those persons political activities and associations. New York Times, November 8, 1969, p. 2.

Pfister, 380 U.S. 479 (1965), and its progency. See particularly Stamler v. Willis, Nos. 17406 and 17407 (7th Cir., Aug. 5, 1969), unreported; Liveright v. Joint Committee of General Assembly of State of Tennessee, 279 F.Supp. 205 (M.D., Tenn., 1968); all cited by appellants in their brief.

Appellees assert on pages 31-36 of their brief that it is settled law that Rule XI is "not constitutionally objectionable." Appellants have argued at length in their brief that in light of more recent Supreme Court decisions the ruling in Barenblatt v. United States, 360 U.S. 109 (1959), is no longer settled law. Nor does Shelton v. United States, 404 F.2d 1292 (D.C.Cir., 1968), cited by appellants support the position that the constitutionality of Rule XI is settled. For it appears from the Shelton decision that the question of the constitutionality of Rule XI was never raised by the defendant and the only constitutional questions to which the Court squarely addressed itself was whether the defendant's rights under the Fifth Amendment were violated by the Committee's demands for documents and whether he was precluded from raising other constitutional questions for procedural reasons.

Appellees have sought to sustain a mandate of a Committee, whose chairman even considers has substantial defects, on the basis of self-preservation of society. At this

particular time which might well be a turning point in our constitutional history it is critical that in considering appellees' contentions this Court weigh against them the words of the former Chief Justice in United States v. Robel, 389 U.S. 258, 264 (1967), in stating:

> "Yet, this concept of a 'national defense' cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart. For almost two centuries, our country has taken singular pride in the democratic ideals enshrined in its Constitution, and the most cherished of those ideals have found expression in the First Amendment. It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties -- the freedom of association -- which makes the defense of the Nation worthwhile."

Respectfully submitted,

Arthur Kinoy
Morton Stavis
Nancy Stearns
588 Ninth Avenue
New York, New York 10036

Henry M. di Suvero
25 East 26th Street
New York, New York 10010

Jeremiah S. Gutman
363 Seventh Avenue
New York, New York 10001

Sanford Katz
30 East 42nd Street
New York, New York 10017

Lubell & Lubell
103 Park Avenue
New York, New York 10017

[illegible]
[illegible] West
[illegible]

Melvin Wulf
156 Fifth Avenue
New York, New York 10010

Philip J. Hirschkop

William M. Kunstler
Philip J. Hirschkop
1025 33rd Street, N.W.
Washington, D.C.

Attorneys for Plaintiffs-Appellants